

September 10, 2020

The Honorable Elizabeth Hanes
Spottswood W. Robinson III & Robert R. Merhige,
Jr., U.S. Courthouse
701 East Broad Street, 5th Floor
Richmond, VA 23219

Dear Judge Hanes:

I am writing this recommendation for Deron Johnson, who has applied for a clerkship in your chambers. I had the privilege of having Deron in three of my classes (Torts, Evidence, and Statistical Concepts for Lawyers) during his time at Vanderbilt. After a clerkship and some time in practice, Deron is now hoping to secure another judicial clerkship, and I recommend him highly.

In class, Deron was an eager learner and a strong classroom performer. I remember him distinctly because he contributed regularly to the Socratic discussions, and he often came to office hours to explore issues beyond the in-class materials. He is intellectually curious, and I very much enjoyed our conversations.

Whether it is preparing for class, having questions at office hours, or submitting written assignments, Deron always places his best foot forward. He is a professional, and I am confident that he has not only the intellect to be an excellent law clerk, but also the ever-important interpersonal skills as well. I hope that you will give his candidacy serious consideration.

Sincerely yours,

Edward K. Cheng, JD PhD
Hess Professor of Law

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SIXTEENTH JUDICIAL DISTRICT

CIRCUIT COURT

DIVISION II

RUTHERFORD & CANNON COUNTIES

DAVID M. BRAGG
Circuit Judge

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June 30, 2020

Dear Sir/Madam:

I am delighted to recommend Mr. Deron Johnson. Mr. Johnson served as a Law Clerk/Court Officer in the Circuit Court for the 16th Judicial District, Part 2.

There were several applicants for this position. Mr. Johnson was chosen based on his prior experience and the excellent recommendations he received. Mr. Johnson has prior courtroom experience as an attorney advising and representing clients.

Mr. Johnson assisted me in preparation for court and in the courtroom. He has prepared research memos, evaluated files, reviewed evidence and case law in addition to serving as court officer. He has demonstrated great skill in researching statutes and case law to find prior rulings that are pertinent and on point. He prepared drafts of orders from oral rulings and responded to correspondence. I have found his writing to be cogent and clear.

He demonstrates complete competence in every task I assign him. I was impressed by his ability to identify the critical facts and arguments presented in court. He is able to articulate legal issues and discern what is important to each party's position.

Mr. Johnson is intelligent and enthusiastic. He undertakes tasks on his own initiative. He has a great personality and sense of humor. His smile is contagious.

At all times I have found Mr. Johnson to be dependable, conscientious and courteous. He has demonstrated an ability to interact with both attorneys and members of the public in a professional and helpful manner.

I am happy to provide further information, if required.

Sincerely,

Judge David M. Bragg

WRITING SAMPLE

The following writing sample was completed during my most recent employment with Cornelius & Collins, LLP, in Nashville, Tennessee. It is being used with the firm's approval. Outside of a few minor edits suggested by the supervising partner on the case, the memorandum is fully my own work, and was filed as presented below.

IN THE CHANCERY COURT FOR DAVIDSON COUNTY, TENNESSEE
AT NASHVILLE

SEAN FLOOD,)	
)	
Plaintiff,)	
)	
v.)	NO. 19-0185-III
)	
REGAL HOMES, CO.,)	
)	
Defendant.)	

**REGAL HOMES, CO.’S MEMORANDUM OF LAW AND FACTS IN SUPPORT OF ITS
MOTION TO TRANSFER PURSUANT TO TENN. CODE ANN. § 16-1-116, OR IN THE
ALTERNATIVE, MOTION TO DISMISS PURSUANT TO T.R.C.P. RULE 12.02(3)**

Defendant Regal Homes, Co. (“Regal Homes”), by and through counsel, hereby files this Memorandum of Law and Facts in support of its Motion to Transfer Pursuant to Tenn. Code Ann. § 16-1-116 or, in the alternative, Motion to Dismiss Pursuant to T.R.C.P. Rule 12.02(3). As argued more fully below, Regal Homes will show that on October 12, 2016, closing occurred on a home purchased by Plaintiff from Defendant. In a binding contract executed on that date, Plaintiff and Defendant agreed that “the jurisdiction for any legal matters resulting from the sale of the Property shall be heard in Cheatham County[,.] Tennessee.” (See Punch Agreement and Release, attached to Motion to Transfer as Exhibit A). Despite this provision, plaintiff filed the current action alleging defects in the construction of the house in the Chancery Court for Davidson County, Tennessee. In the current action, Plaintiff asserts claims of breach of contract, violation of the Tennessee Consumer Protection Act, and negligence, and seeks compensatory damages in the amount of the cost to determine the scope of the alleged damage to the home and to repair the home, as well as consequential and incidental damages and attorney’s fees. Under Tennessee case law, these claims are transitory in nature, and Tenn. Code Ann. § 20-4-101(a) recognizes that

parties can stipulate to a particular venue for the resolution of transitory actions. Accordingly, because the parties have stipulated to a particular venue for the resolution of this transitory action, and because this action was filed in a venue other than the venue stipulated to, this Court is an improper venue for the action brought by the Plaintiff and the proper venue for this case is the Chancery Court for Cheatham County, Tennessee. Additionally, at the time this action was filed, Plaintiff could have brought this action in the Chancery Court for Cheatham County, Tennessee, and a transfer to that court would be in the interest of justice. Thus, transfer of this action by this Court pursuant to Tenn. Code Ann. § 16-1-116 to the Chancery Court for Cheatham County, Tennessee, is appropriate. In the alternative, Regal Homes will show that dismissal of this case pursuant to Rule 12.02(3) of the Tennessee Rules of Civil Procedure is appropriate, because, as stated above, this Court is an improper venue for the claims brought by Plaintiff.

BACKGROUND

This case involves Plaintiff's purchase of a home constructed by Defendant. In the fall of 2016, Plaintiff decided to purchase a home located at 614B South 11th Street, in Nashville, Tennessee. (Compl. ¶¶ 7, 8, 10). At that time, the home was still under construction by Defendant. (Compl. ¶¶ 8, 9). Plaintiff and Defendant entered into a contract for the purchase of the home on September 6, 2016, and closing occurred on October 12, 2016. (Compl. ¶¶ 12, 17). During closing, Plaintiff and Defendant executed a "Punch Agreement and Release," stating that Plaintiff and Defendant "agree that the jurisdiction for any legal matters resulting from the sale of the Property shall be heard in Cheatham County[, Tennessee]." (Reigle Affidavit & Punch Agreement and Release, attached to Motion to Transfer as Exhibit A & Exhibit B). Plaintiff alleges that the construction of the house was defective, resulting in leaks throughout the home. (Compl. ¶¶ 18-32). On February 7, 2019, Plaintiff filed a complaint in the Chancery Court for Davidson County,

Tennessee, raising claims against Defendant for breach of contract, violation of the Tennessee Consumer Protection Act, and negligence. (Compl. ¶¶ 35-64). For damages, he seeks compensatory damages in the amount of the cost to determine the scope of the damage to the home and to repair the home, as well as consequential and incidental damages and attorneys' fees pursuant to the contract and the Tennessee Consumer Protection Act. (Compl. ¶¶ 47-49, 53-55, 62-64; Prayer for Relief).

APPLICABLE LAW AND ARGUMENT

I. Transfer of This Action to the Chancery Court for Cheatham County, Tennessee, Is Appropriate under Tenn. Code Ann. § 16-1-116.

Tenn. Code Ann. § 16-1-116 provides that, “when an original civil action . . . is filed in a state or county court of record . . . and such court determines that it lacks jurisdiction, the court shall, if it is in the interest of justice, transfer the action . . . to any other such court in which the action or appeal could have been brought at the time it was originally filed.” Tenn. Code Ann. § 16-1-116. A transfer of an incorrectly filed case pursuant to this statute “is not . . . automatic; rather, the trial court determines, in its discretion, whether the transfer is warranted.” *Turner v. State*, 184 S.W.3d 701, 705 (Tenn. Ct. App. 2005). The Tennessee Court of Appeals has summarized the process by which a Court may make such a determination by saying that “[t]he Transfer Statute expressly authorizes a court *lacking jurisdiction* over a claim to transfer the claim to a court with jurisdiction, provided two conditions are met: 1) If, ‘at the time it was originally filed,’ the claim ‘could have been brought’ in the court with jurisdiction, and 2) The transfer ‘is in the interest of justice.’” *Haynes v. Rutherford Cnty.*, 359 S.W.3d 585, 588 (Tenn. Ct. App. 2011) (citing Tenn. Code Ann. § 16-1-116) (emphasis added). Thus, in order to establish that a transfer pursuant to Tenn. Code Ann. § 16-1-116 is warranted, the moving party must show first that the court in which the action was filed does not have jurisdiction; second, that the claim, at the time it

was originally filed, could have been brought in the court to which the moving party seeks to transfer the action; and third, that the transfer is in the interest of justice. *See Id.*

A. The Action Brought by Plaintiff is Transitory, and Because of the Forum Selection Clause Agreed to by Plaintiff and Defendant, May Only be Brought in Cheatham County, Tennessee.

Whether this Court may hear the instant action turns on whether this Court is the proper venue for hearing the claims brought by Plaintiff. Under Tennessee law, “[v]enue refers to locality, and in the legal sense it signifies the proper locality in which a court of competent jurisdiction may adjudicate an action.” *Hawkins v. Tenn. Dep’t of Corr.*, 127 S.W.2d 749, 753 (Tenn. Ct. App. 2002). The Tennessee Court of Appeals has described the concept of venue as follows:

“Venue” is not synonymous with “jurisdiction,” which refers to the power or authority of the court to decide certain cases. Venue is the specific place where a court with jurisdiction may hear a complaint or other pleading. Proper venue is grounded in fairness or convenience to the litigants or other commanding policy considerations.

Kampert v. Valley Farmers Coop., No. M2009-02360-COA-R10-CV, 2010 WL 4117146, at *2 (Tenn. Ct. App. Oct. 19, 2010) (citation and internal quotations omitted).

In order to review whether venue is proper in a particular court, a court “must first determine whether [the action] is a local or transitory action.” *Elliot v. Akey*, No. E2004-01478-COA-R3-CV, 2005 WL 975510, at *3 (Tenn. Ct. App. April 27, 2005). The Tennessee Court of Appeals has described a transitory action as being “based on a cause of action of a type that can arise anywhere.” *Kampert*, 2010 WL 4117146, at *2 (citing *Curtis v. Garrison*, 364 S.W.2d 933 (Tenn. 1963)). Examples of a transitory action include “tort and contract actions.” *Elliot*, 2005 WL 975510, at *3.

In contrast, the same Court has described a local action as an action “based on a cause of action that can only arise in a particular locality, because ‘the subject of the action’ (meaning that

which has sustained the injury complained of) is local, ‘and cannot be injured at any other place.’” *Kampert*, 2010 WL 4117146, at *2 (citing *Burger v. Parker*, 290 S.W. 22, 23 (Tenn. 1926)). Local actions “generally involve land,” and typical examples of local actions include “an action to quiet title to land, a trespass, or an injury to real estate.” *Id.* However, “not every action that involves a specific tract of land is considered a local action.” *Id.* As proof, the Court of Appeals cites *Mattix v. Swepston*, 155 S.W.928 (Tenn. 1913), in which the Tennessee Supreme court held that “a suit that arose from obstruction of an easement was determined to be a transitory action, because the damages complained of were to the plaintiff’s timber business, not to the land itself nor to the plaintiff’s title to that land.” *Id.* The Supreme Court, in *Mattix*, elucidates the difference between local and transitory actions as follows:

The most typical illustration of a local action is an injury to real estate, and of a transitory action an injury to the person . . . It is well settled that, where an action on covenant broken is founded on privity of contract between the parties, it is transitory; but, where it is on privity of estate, it is local.

Mattix, 155 S.W. at 930.

The reason it is so critical to determine whether an action is local or transitory when determining the proper venue for that action is that the proper venue is determined differently based on whether the action is local or transitory. Local actions “may only be brought in the county where the subject matter of the dispute is located.” *Kampert*, 2010 WL 4117146, at *3 (citing *State ex rel. Logan v. Graper*, 4 S.W.2d 955, 956 (Tenn. 1927)). The localization of an action “creates subject matter jurisdiction restrictions” on Tennessee courts. *Pack v. Ross*, 288 S.W.3d 870, 872 (Tenn. Ct. App. 2008). Indeed, the Supreme Court of Tennessee has held that “[t]he Courts of our State have no jurisdiction of local actions brought in the wrong county and consent cannot give jurisdiction.” *Curtis v. Garrison*, 364 S.W.2d 933, 936 (Tenn. 1963). Accordingly, “when a party files a complaint for an action that is local in nature, venue for that action becomes jurisdictional.”

Kampert, 2010 WL 41171446, at *3. As a result, Tennessee Courts have long held that “venue in local actions is not a matter which can be waived.” *Adams v. State ex rel. Chattanooga Coke & Chemicals*, 514 S.W.2d 424, 426 (Tenn. 1974). In sum, if an action is held to be local, as a matter of both venue and subject-matter jurisdiction, that action can only be heard in the county where the property is located. In addition to case law, the statute that sets the venue requirements for chancery courts also dictates that certain kinds of local actions may only be filed in the county where the subject matter of the dispute is located:

All bills filed in any court seeking to divest or clear the title to land, or to enforce the specific execution of contracts relating to realty, or to foreclose a mortgage or deed of trust by a sale of personal property or realty, shall be filed in the county in which the land, or a material part of it, lies, or in which the deed or mortgage is registered.

Tenn. Code Ann. § 16-11-114.

For transitory actions, “[a]lthough concepts of venue had their origin in the common law, venue is today largely regulated by statute.” *Kampert*, 2010 WL 4117146, at *3 (citing *Pack*, 288 S.W.3d at 872). Tenn. Code Ann. § 20-4-101(a) provides that “[i]n all civil actions of a transitory nature, unless venue is otherwise expressly provided for, the action may be brought in the county where the cause or action arose or in the county where the defendant resides or is found.” Tenn. Code Ann. § 20-4-101(a). This statute is based upon the principle that, because transitory actions can arise anywhere, “[a]s a general rule suits growing out of personal differences between litigants whether they arise out of tort or contract follow the defendant and suit may be instituted against him wherever found.” *Curtis*, 364 S.W.2d at 934.

The language in Tenn. Code Ann. § 20-4-101(a) indicating that venue is to be determined according to the statute’s language “unless venue is otherwise expressly provided for” has been held to “implicitly recognize[] that parties can stipulate to a particular venue for resolution of

transitory action.” *Kampert*, 2010 WL 4117146, at *3. Such stipulations in the form of forum selection clauses “are routinely upheld by the courts unless other considerations, like fairness to the parties, preclude enforcement.” *Id.* “Generally, a forum selection is enforceable and binding on the parties entering into the contract . . . A forum selection clause will be upheld if it is fair and reasonable in light of all the circumstances surrounding its origin and application.” *Blackwell v. Sky High Sports Nashville Operations, LLC*, 523 S.W.3d 624, 630 (Tenn. Ct. App. 2017) (citations omitted).

In *Dyersburg Machine Works, Inc., v. Rentenbach Engineering Company*, 650 S.W.2d 378 (Tenn. 1983), a seminal case for evaluating forum selection clauses under modern Tennessee law, the Tennessee Supreme Court set out several factors upon which Tennessee Courts should rely in evaluating whether a forum selection clause is enforceable, to include whether:

(1) the plaintiff cannot secure effective relief in the other state, for reasons other than delay in bringing the action; (2) or the other state would be a substantially less convenient place for the trial of the action than this state; (3) or the agreement as to the place of the action was obtained by misrepresentation, duress, abuse of economic power, or other unconscionable means; (4) or it would for some other reason be unfair or unreasonable to enforce the agreement.

Dyersburg Mach. Works, Inc. v. Rentenbach Engineering Co., 650 S.W.2d 378, 380 (Tenn. 1983).

In deciding whether to enforce a forum selection clause, the Tennessee Supreme Court stated that Tennessee courts “should give consideration to the above mentioned factors and any others which bear upon the fundamental fairness of enforcing such a forum selection clause, and should enforce such a clause unless the party opposing enforcement demonstrates that it would be unfair and inequitable to do so.” *Id.* Two years after *Dyersburg* was decided, a federal district court in Tennessee, after noting that Tennessee state law “is in substantial conformity with the federal approach to forum selection clauses,” stated:

The law of Tennessee as well as federal decisional law acknowledges that forum selection clauses are *prima facie* valid and should be enforced unless the party resisting application of the clause can clearly show that enforcement would be unreasonable and unjust, or that the clause was invalid for such reasons as fraud or overreaching.

Carefree Vacations, Inc. v. Brunner, 615 F.Supp. 211, 213 (W.D. Tenn. 1985). In addition to examining whether the *enforcement* of a forum selection clause would be unfair or inequitable, courts often look at the circumstances of the *formation* of a forum selection clause, holding that “[a] party seeking to invalidate a forum selection clause must prove that the clause resulted from misrepresentation, duress, abuse of economic power, or other unconscionable means.” *Cohn Law Firm v. YP Se. Adver. & Publ’g, LLC*, No. W2014-01871-COA-R3-CV, 2015 WL 3883242, at *4 (Tenn. Ct. App. June 24, 2015) (citing *Lamb v. MegaFlight, Inc.*, 26 S.W.3d 627, 631 (Tenn. Ct. App. 2000)). Whether a party resists the enforcement of a forum selection clause because of the circumstances of the clause’s formation or because enforcement would be unreasonable or unfair, “Tennessee law is clear that the party challenging the enforcement of the forum selection clause should bear a heavy burden of proof.” *Id.* at *4.

Given the law on determining venue for transitory and local actions produced above, this case is at a fork in the road, and two clearly defined paths lie ahead. This Court’s decision on the proper venue for this action will dictate along which of those paths this action will proceed. Either the action brought by Plaintiff is a local action, and thus, since the property at issue is located in Davidson County, Davidson County is the only proper venue for Plaintiff’s action; or the action brought by Plaintiff is a transitory action, and thus, since venue is otherwise provided for by a presumptively valid forum selection clause stating that any action must be brought in Cheatham County, Tennessee, Cheatham County is the only proper venue for Plaintiff’s action.

The case of *Kampert v. Valley Farmers Cooperative*, No. M2009-02360-COA-R10-CV, 2010 WL 4117146 (Tenn. Ct. App. Oct. 19, 2010) is directly on point, and thus proves instructive for this Court in deciding whether the actions brought in this case are transitory or local, and accordingly whether this Court is the proper venue for Plaintiff's action. In *Kampert*, the Tennessee Court of Appeals accepted an application for extraordinary appeal "in order to decide whether the proper venue for a case involving the breach of a construction contract is in the county named in the forum selection clause of the contract, or in the county where the realty is located upon which the construction took place," the very same issue upon which this motion turns. *Kampert*, 2010 WL 4117146, at *1. The Court held that "the forum selection clause determines the proper venue, because the underlying action cannot fairly be characterized as an action for injury to real property and is, thus, a transitory action." *Id.*

In *Kampert*, the owners of Kampert Dairy, LLC, a dairy farm in Giles County, Tennessee, entered into a contract with Valley Farmers Cooperative ("VFC") under which VFC was to construct an operational dairy facility on the Kamperts' Farm. *Id.* That contract included a forum selection clause stating that "venue for any litigation shall lie in the Circuit or Chancery Court for McMinn County, Tennessee." *Id.* At some point during or after the construction, the Kamperts filed a complaint in Giles County against VFC and two of its officers, alleging that defendants "had breached their contract by performing shoddy workmanship, incurring cost overruns, and using inferior materials," and raising claims of "breach of contract, negligence, civil fraud, intentional infliction of emotional distress, and violation of the [Tennessee] Consumer Protection Act." *Id.* The defendants subsequently filed a motion to dismiss for improper venue contending that, due to the forum selection clause in the contract, suit could only be brought in McMinn County. *Id.* In response, plaintiffs argued that the forum selection clause was void because the

action at hand was a local action, and thus venue was only appropriate in Giles County where the real estate was located. *Id.* The trial court accepted plaintiffs' argument, held that the action was a local action and thus venue was only appropriate in Giles County, and dismissed the defendants' motion to dismiss for improper venue. *Id.* After the trial court denied the defendant's motion for an interlocutory appeal, the Tennessee Court of Appeals granted a motion for extraordinary appeal. *Id.* at *2.

After setting out the applicable case law regarding the difference in venue for transitory and local actions, the Court of Appeals addressed the arguments made by plaintiffs in turn. The plaintiffs first analogized their claims to those brought in two earlier cases. In *Hall v. Southall Brothers*, 240 S.W. 298 (Tenn. 1921), plaintiffs brought claims for the "negligent destruction by fire of two barns on the plaintiff's property." *Id.* at *3. Those claims were held to be "an injury to realty, which accordingly gave rise to a local action that could only be brought in Hickman County, where the plaintiffs' farm was located." *Id.* In *Wylie v. Farmers Fertilizer & Seed Co.*, W2002-01227-COA-R9-CV, 2003 WL 21998408 (Tenn. Ct. App. Aug. 21, 2003), plaintiffs brought claims relating to the "damage to the trees in the plaintiffs' orchard, caused by negligent spraying of herbicides on nearby crops." *Id.* at *4. Because "plaintiffs sought compensation for the damage to the trees themselves, and . . . trees are considered real estate until they are severed from the land," the action brought by plaintiffs "was deemed to be a local action which had to be brought in Gibson County where the orchard was located." *Id.*

However, the Court of Appeals found the plaintiffs' analogizing to those cases to be unpersuasive. In the case brought by the Kamperts, the Court noted that, "although the plaintiffs cited a variety of possible claims against the defendants in their complaint, they did not even mention injury to the land," as opposed to the injuries to the land raised by the plaintiffs in both

Hall and *Wylie*. *Id.* Indeed, the Kamperts “did not suggest that the value of their land had declined because of the negligence of the defendant”, but claimed instead “that the injury they suffered as a result of the defendants’ actions was the loss of earnings and profits, because the defendants’ alleged negligence had prevented them from operating their dairy business in the way they had anticipated.” *Id.* The Court went further in differentiating the Kamperts’ claim from the claims brought in *Hall* by noting that, “in *Hall*, the two barns were already affixed to the land, and their destruction was deemed to be an injury to realty because it presumably reduced the value of the property.” *Id.* Unlike in *Hall*, the Kamperts’ claims “involved faulty construction of new buildings on the plaintiffs’ land.” *Id.* If the Court were to hold the Kamperts’ claims “to be a local action, it would effectively make all actions on construction contracts local, and it would render void any forum selection clause in a construction contract that designates venue in a county other than the one where the construction takes place.” *Id.*

The Court was determined to avoid this consequence, as “[s]uch a deviation from current well-established law would not only overturn settled precedent, [but] would contradict the statutory implication that contracts for improvement to real estate may include choice of venue provisions.” *Id.* The statutory implication found by the Court was based upon Tenn. Code Ann. § 66-11-208’s voiding of any forum selection clause that makes a contract for the improvement of real property “subject to the substantive laws of another state or mandates that the exclusive forum for any litigation, arbitration or other dispute resolution process is located in the other state.” *Id.* (quoting Tenn. Code Ann. § 66-11-208(a)). Based upon that statute, the Court inferred that, “by rendering void only those venue selection provisions which send litigation involving contracts for the improvement of real property in this state to forums in other states, our legislature was

implicitly recognizing the presumptive validity of venue selection clauses in those construction contracts that provide for venue in a particular forum” inside Tennessee. *Id.* at *5.

The Court concluded its analysis of whether the Kamperts’ claims were transitory or local claims by summarizing its decision as follows:

As we noted above, the parties’ construction contract stated that any litigation involving the contract would lie in the Circuit or Chancery Court for McMinn County. The plaintiffs brought suit in Giles County and asserted five claims in their complaint: breach of contract, negligence, civil fraud, intentional infliction of emotional distress and violation of the Consumer Protection Act. All of these are claims of a type that could arise anywhere. Thus, the action is transitory in nature and the trial court erred in ruling that the venue selection clause in the construction contract could not be enforced.

Id.

Finally, the Court of Appeals acknowledged that while, in light of its ruling, it “could simply grant the defendants’ motion to dismiss the complaint, thereby obligating the plaintiffs to re-file their complaint in McMinn County if they wish to continue this litigation,” it felt that “in the interests of justice and of judicial economy it is more appropriate to direct the trial court to exercise the powers granted to it by Tenn. Code Ann. § 16-1-116.” *Id.* Accordingly, upon finding that the trial court was an improper venue for the transitory action brought by plaintiffs, the Court of Appeals directed the trial court upon remand to transfer the case to an appropriate court in McMinn County. *Id.* at *6.

Here, the action brought by Plaintiff is a transitory action. In his complaint, Plaintiff brings claims for breach of contract, negligence, and violation of the Tennessee Consumer Protection Act. Those claims are specifically cited as examples of transitory actions in case law. *See Mattix*, 155 S.W. at 930 (“It is well settled that, where an action on covenant broken is founded on privity of contract between the parties, it is transitory”); *Elliot*, 2005 WL 975510, at *3 (“[E]xamples [of transitory actions] are tort and contract actions”). Not only that, but all three of the claims raised

by Plaintiff here were also raised by the Kamperts, and the Court of Appeals explicitly determined that they were “claims of a type that could arise anywhere” and thus the Kamperts’ action was “transitory in nature.” *See Kampert*, 2010 WL 4117146, at *5. His prayer for relief is for economic damages and attorneys’ fees, just as in *Kampert*, the plaintiffs’ claim was for economic damages rather than equitable relief. *See Kampert*, 2010 WL 4117146, at *4 (“[Plaintiffs] claimed . . . that the injury they suffered as a result of the defendants’ actions was the loss of earnings and profits, because the defendants’ alleged negligence had prevented them from operating their dairy business in the way that they had anticipated”).

Not only does Plaintiff bring claims that have already been determined by the Court of Appeals to be transitory claims, but he fails to bring any claims that would typically be classified as local claims. Just as the plaintiffs did in *Kampert*, here, while Plaintiff cites “a variety of possible claims” against the defendants, he “[does] not even mention injury to the land.” *Id.* He does not “suggest that the value of [his] land had declined because of the negligence of the Defendant.” *Id.* Indeed, he does not bring *any* claims that would be considered local under either Tennessee case law or Tennessee statutory law. His action is not “an action to quiet title to land, a trespass, or an injury to real estate.” *Id.* at *2. His action is not based on privity of estate. *See Mattix*, 155 S.W. at 930 (“[W]here [an action is founded] on privity of estate, it is local”). His action is not a bill seeking to divest or clear the title to land, or to enforce the specific execution of contracts relating to realty, or to foreclose a mortgage or deed of trust by a sale of personal property or realty such that venue for it would be localized under the chancery venue statute, Tenn. Code Ann. § 16-11-114. Thus, no claim brought by Plaintiff could possibly be classified as a local action.

Further, there are no facts alleged by Plaintiff that would enable him to meet the heavy burden of proving that the forum selection clause in this case should not be enforced, thereby

allowing a court not located in Cheatham County, Tennessee, to be a proper venue for his claims. The facts in this case include nothing that would allow a court to find that the enforcement of the forum selection clause in this case would be unreasonable, unfair, or unjust. Likewise, there are no facts in this case that would indicate that the forum selection clause resulted from misrepresentation, duress, abuse of economic power, or other unconscionable means. Accordingly, the forum selection clause here is valid and enforceable, thereby making any court not located in Cheatham County, Tennessee, an improper venue for Plaintiff's claims.

Just as in *Kampert*, the alleged negligence in Plaintiff's case "involved faulty construction of new buildings." *Kampert*, 2010 WL 4117146, at *4. Just as in *Kampert*, holding Plaintiff's action to be a local action "would effectively make all actions on construction contracts local, and . . . would render void any forum selection clause in a construction contract that designates venue in a county other than the one where the construction takes place," the result that the Court of Appeals called "a deviation from current well-established law [that] would not only overturn settled precedent, it would contradict the statutory implication that contracts for improvement to real estate may include choice of venue provisions. *Id.* at *4. And, just as in *Kampert*, this Court, pursuant to Tenn. Code Ann. § 16-1-116, has the power to transfer this transitory action filed in the improper venue to the appropriate venue.

B. This Action Could Have Been Brought in the Chancery Court for Cheatham County, Tennessee, at the Time It Was Originally Filed.

Plaintiff's claims in this suit could have been brought in the Chancery Court for Cheatham County, Tennessee, at the time he filed this suit in the Chancery Court for Davidson County, Tennessee. Chancery courts have concurrent jurisdiction with circuit courts "of all civil causes of action, triable in the circuit court, except for unliquidated damages for injuries to person or character, and except for unliquidated damages for injuries to property not resulting from a breach

of oral or written contract.” Tenn. Code Ann. § 16-11-102(a). In Tennessee, circuit courts are “court[s] of general jurisdiction” that can hear “all cases where the jurisdiction is not conferred upon another tribunal.” Tenn. Code Ann. § 16-10-101. As this case falls within the general jurisdiction grant to circuit courts, and as it does not involve unliquidated damages for injuries to person or character or injuries to property not resulting from a breach of oral or written contract, the Cheatham County Chancery Court would have had subject matter jurisdiction. Under Tenn. Code Ann. § 20-2-222, a court may exercise personal jurisdiction over a corporation domiciled in or organized under the laws of Tennessee. Tenn. Code Ann. §§ 20-2-221, 20-2-222. As Defendant is a corporation domiciled in Cheatham County, Tennessee, and organized under the laws of the State of Tennessee, the Cheatham County Chancery Court would have had personal jurisdiction over Defendant. Finally, as is more fully stated above, because the action brought by Plaintiff here is a transitory action and venue is otherwise provided for under Tenn. Code Ann. § 20-4-101(a) by a presumptively valid forum selection clause agreed to by both Plaintiff and Defendant stating that any legal matters resulting from the sale of the property shall be heard in Cheatham County, Tennessee, the Chancery Court for Cheatham County, Tennessee, would have been the proper venue to hear Plaintiff’s claims.

C. The Transfer of the Action Is in the Interest of Justice.

There is very little case law interpreting whether a transfer is in the “interest of justice” as stated in Tenn. Code Ann. § 16-1-116. However, Courts have interpreted the statute and accompanying case law to say that this clause should be interpreted liberally: “We are mindful that [Tenn. Code Ann.] § 16-1-116 contains the proviso that the transfer should be ‘in the interest of justice,’ but . . . that proviso must be interpreted liberally in favor of transfer and that the alternative should be, at worst, dismissal without prejudice so as to allow refiling in the correct court.” *Young*

v. Davis, No. E2008-01974-COA-R3-CV, 2009 WL 3518162, at *4 (Tenn. Ct. App. Oct. 30, 2009) (quoting Tenn. Code Ann. § 16-1-116), *overruled on other grounds by Sneed v. City of Red Bank*, 459 S.W.3d 17 (Tenn. 2014).

Here, transferring Plaintiff's action would undoubtedly serve the interest of justice. It would allow Plaintiff the chance to have his claims heard in the appropriate venue without having to expend time and effort on re-filing his action in a different county. It will allow Defendant the chance to defend against the action in a place where it is at home. It will allow both parties to gain the benefit of their bargained-for agreement regarding the venue in which any legal issues resulting from the transaction will be litigated; this is certainly in the interest of justice, as no less than the United States Supreme Court has said that "[t]he enforcement of valid forum-selection clauses, bargained for by the parties, protects their legitimate expectations and furthers vital interests of the justice system." *Atlantic Marine Const. Co., Inc. v. U.S. Dist. Court for Western Dist. of Texas*, 571 U.S. 49, 63 (2013) (internal quotation marks and citation omitted). Finally, transfer will allow both parties to gain all of these benefits without suffering the extension of time that would accompany the dismissal of Plaintiff's action and its re-filing in a different venue, as both parties have interests in resolving this dispute as quickly as possible. Accordingly, the transfer of Plaintiff's action to the Chancery Court of Cheatham County, Tennessee, would be in the interest of justice.

II. In the Alternative, Dismissal of This Action is Appropriate under T.R.C.P. 12.02(3), as This Court is not the Proper Venue for Plaintiff's Claims.

Should this Court find that the transfer of this action pursuant to Tenn. Code Ann. § 16-1-116 is not appropriate, Regal Homes moves this Court for an order dismissing this action pursuant to Rule 12.02(3) of the Tennessee Rules of Civil Procedure. Rule 12.02 of the Tennessee Rules of Civil Procedure provides that "the following defenses may at the option of the pleader be made by

motion in writing: . . . (3) improper venue.” T.R.C.P. 12.02. As demonstrated above, this Court is the improper venue for the claims brought by Plaintiff, in that this action is transitory, venue is otherwise provided for by a presumptively valid forum selection clause, and this action was filed in a forum other than the forum designated in the forum selection clause. Accordingly, dismissal of this action pursuant to Rule 12.02(3) is appropriate.

CONCLUSION

For the grounds stated above, Regal Homes respectfully submits that this motion for transfer pursuant to Tenn. Code Ann. § 16-1-116 should be granted, as the record reflects that the claims brought by the Plaintiff are transitory in nature, and venue is otherwise provided for by a valid forum selection clause stating that any disputes resulting from the sale of the property would be heard in Cheatham County, Tennessee. Accordingly, this Court is an improper venue for the action brought by the Plaintiff and the proper venue for this case is the Chancery Court for Cheatham County, Tennessee. Additionally, at the time this action was filed, Plaintiff could have brought this action in the Chancery Court for Cheatham County, Tennessee, and a transfer to that court would be in the interest of justice. Thus, transfer of this action by this Court pursuant to Tenn. Code Ann. § 16-1-116 to the Chancery Court for Cheatham County, Tennessee, is appropriate. In the alternative, Regal Homes respectfully submits that dismissal of this action pursuant to Rule 12.02(3) of the Tennessee Rules of Civil Procedure is appropriate, because, as stated above, this Court is an improper venue for the claims brought by Plaintiff.

Respectfully Submitted:

s/ Deron L. Johnson
Deron L. Johnson (#36616)
CORNELIUS & COLLINS, LLP
Suite 1500, Nashville City Center
511 Union Street
P. O. Box 190695
Nashville, TN 37219
(615) 244-1440

Attorney for Defendant,
Regal Homes Co.

Applicant Details

First Name **Jacob**
 Last Name **Johnson**
 Citizenship Status **U. S. Citizen**
 Email Address **johnson4@uchicago.edu**
 Address

Address

Street
3445 S Paulina St
 City
Chicago
 State/Territory
Illinois
 Zip
60608
 Country
United States

Contact Phone Number **7082173767**

Applicant Education

BA/BS From **University of Chicago**
 Date of BA/BS **June 2016**
 JD/LLB From **The University of Chicago Law School**
<https://www.law.uchicago.edu/>
 Date of JD/LLB **June 1, 2022**
 Class Rank **School does not rank**
 Does the law school have a Law Review/Journal? **Yes**
 Law Review/Journal **No**
 Moot Court Experience **Yes**
 Moot Court Name(s) **Hinton Moot Court Competition**

Bar Admission

Prior Judicial Experience

Judicial Internships/Externships **No**
Post-graduate Judicial Law Clerk **No**

Specialized Work Experience

Recommenders

Barry, Patrick
barrypj@umich.edu
734-763-2276
Jonathan, Lowy
jlowy@bradyunited.org
202-370-8104
Miller, Erin
elmiller@uchicago.edu

References

Patrick Barry (Professor)
(585) 690-3337
pjbarry@uchicago.edu

Benetrice Whitfield-Lucas (Principal)
(773) 534-8980
blwhitfield@cps.edu

Abigail Noble (Grade Partner Teacher)
(312) 778-0103
anoble5@cps.edu

This applicant has certified that all data entered in this profile and any application documents are true and correct.

3445 S. Paulina St.
Chicago, IL 60608
(708) 217-3767

June 14, 2021

The Honorable Elizabeth W. Hanes
U.S. District Court for the Eastern District of Virginia
Spottswood W. Robinson III & Robert R. Merhige, Jr., U.S. Courthouse
701 East Broad Street, 5th Floor
Richmond, VA 23219

Dear Judge Hanes,

I am a rising third-year law student at the University of Chicago Law School. I am applying for a clerkship in your chambers for the 2022 term. I would relish the opportunity to begin my legal career clerking for a former public defender. After clerking, I also plan to become a public defender.

Clerking at a boutique civil rights firm in Chicago this year cemented my interest in a judicial clerkship. Experiencing high stakes litigation, writing to persuade judges, and listening to case strategy convinced me of the merits of pursuing a clerkship. Since joining that firm, I helped draft a class action complaint on behalf of Chicago children traumatized by community gun violence. I was responsible for synthesizing the case research and working with the expert witnesses. I currently assist the lead attorney, Thomas Geoghegan, in settlement talks with the state on that case. Additionally, I have written and edited memos, motions, and briefs filed in federal court on topics ranging from Fourth Amendment claims against the police to product liability claims against gun manufacturers.

In addition to my legal experience, I believe my positive attitude, desire to constantly improve, and ability to work collaboratively will make me a meaningful asset in your chambers. I worked as a public school teacher on the west side of Chicago for three years before coming to law school. While teaching first grade and middle school at McNair School of Excellence, I organized fellow teachers to develop school-wide extracurricular programming, worked through nearly every weekend, and attended graduate school at night. I was expected to quickly navigate difficult situations and develop an acute attention for detail through meticulous lesson planning. I would welcome the opportunity to build upon these experiences by clerking in your chambers.

My resume, transcript, writing sample, and letters of recommendation are enclosed. Should you require additional information, please do not hesitate to let me know. Thank you for considering my application.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Johnson", written over a faint circular stamp.

Jacob Johnson

Jacob E. Johnson

3445 S. Paulina Street, Chicago, IL 60608 • (708) 217-3767 • johnson4@uchicago.edu

EDUCATION

The University of Chicago Law School, Chicago, IL
Juris Doctor, expected June 2022

Dominican University School of Education, River Forest, IL
Master of Arts in Elementary Education and Alternative Licensure, May 2018

The University of Chicago, Chicago, IL
Bachelor of Arts, *cum laude*, in Comparative Human Development, June 2016

LEGAL EXPERIENCE

Winston & Strawn, LLP, Chicago, IL
Summer Associate, Summer 2021

Shiller Preyer Jarard & Samuels, Chicago, IL
Law Clerk, October 2020 – June 2021

- Drafted complaints, *Daubert* motions, appellate briefs, and discovery requests/responses for Fourth Amendment police misconduct cases

Brady United – Gun Violence Prevention Organization, Washington D.C.
Legal Intern, Summer 2020

- Wrote memoranda used in the drafting of court filings and journal articles on topics including product liability, public nuisance, constitutional balance of power, and vicarious liability applied to hate crimes
- Participated in discussions on litigation strategy and the civil litigation process including taking depositions, filing a complaint, building relationships with clients, and cultivating experts

Despres, Schwartz, & Geoghegan, Ltd., Chicago, IL
Lead Paralegal, June 2018 – Present

- Locate and synthesize evidence, draft memoranda applying the Americans with Disabilities Act to the plaintiffs' facts, and organize expert testimony for a federal class action lawsuit against the state of Illinois

OTHER EXPERIENCE

McNair School of Excellence, Academy For School Leadership Network, Chicago, IL
Teach For America – Chicago/Northwest-Indiana Corps Member
Elementary/Middle School Teacher, June 2016 - June 2019

- Created daily lesson plans and interim assessments; tracked students' progress toward learning goals
- Engaged in research-based professional development workshops involving pedagogy and behavioral management coaching and implementation
- Fostered a positive classroom culture by executing classroom management systems and procedures

Hephzibah Children's Association Residential Group Home, Oak Park, IL
Child Care Worker, July 2012 – November 2014

- Provided emotional and physical support to psychologically unstable children ages 5-12
- Managed time effectively in a high-intensity environment while documenting Medicaid, caring for minors, and working collaboratively on a team of licensed social workers

The University of Chicago Learning Lab, Chicago, IL
Research Assistant, October 2015 – June 2016

- Assisted with various experimental studies exploring the development of human thinking and learning

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Office of the University Registrar
Chicago, Illinois 60637

Name: Jacob Edward Johnson
Student ID: 10426633

Scott C. Campbell, University Registrar

University of Chicago Law School

Degrees Awarded

Degree: Bachelor of Arts
Confer Date: 06/11/2016
Degree Honors: With General Honors
Comparative Human Development (B.A.) With Honors

Academic Program History

Program: Law School
Start Quarter: Autumn 2019
Program Status: Active in Program
J.D. in Law

External Education

Oak Park and River Forest High School
Oak Park, Illinois
Diploma 2013

Dominican University
River Forest, Illinois
Master of Arts 2018

EP or EF (Emergency Pass/Emergency Fail) grades are awarded in response to a global health emergency beginning in March of 2020 that resulted in school-wide changes to instruction and/or academic policies.

Beginning of Law School Record

Autumn 2019

Course	Description	Attempted	Earned	Grade
LAWS 30101	Elements of the Law Richard McAdams	3	3	175
LAWS 30211	Civil Procedure I William Hubbard	3	3	174
LAWS 30311	Criminal Law Jonathan Masur	3	3	177
LAWS 30611	Torts Jennifer Nou	3	3	176
LAWS 30711	Legal Research and Writing Patrick Barry Erin Lynn Miller	1	1	178

Winter 2020

Course	Description	Attempted	Earned	Grade
LAWS 30311	Criminal Law John Rappaport	3	3	177
LAWS 30411	Property Lee Fennell	3	3	EP
LAWS 30511	Contracts Eric Posner	3	3	EP
LAWS 30611	Torts Adam Chilton	3	3	176
LAWS 30711	Legal Research and Writing Patrick Barry Erin Lynn Miller	1	1	178

Spring 2020

Course	Description	Attempted	Earned	Grade
LAWS 30221	Civil Procedure II Alison LaCroix	3	3	EP
LAWS 30411	Property Lee Fennell	3	3	EP
LAWS 30511	Contracts Eric Posner	3	3	EP
LAWS 30712	Lawyering: Brief Writing, Oral Advocacy and Transactional Skills Erin Lynn Miller	2	2	EP
LAWS 40301	Constitutional Law III: Equal Protection and Substantive Due Process Aziz Huq	3	3	EP

Autumn 2020

Course	Description	Attempted	Earned	Grade
LAWS 41018	Modern Professional Responsibility Mark Nozette	3	3	176
LAWS 41101	Federal Courts Fred Smith	3	3	173
LAWS 53264	Advanced Legal Research Todd Ito Scott Vanderlin	2	2	180
LAWS 53497	Editing and Advocacy Patrick Barry	2	2	P
LAWS 95030	Moot Court Boot Camp Rebecca Horwitz Madeline Lansky	2	2	P

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Name: Jacob Edward Johnson
Student ID: 10426633

Scott C. Campbell, University Registrar

University of Chicago Law School

Winter 2021

Course	Description	Attempted	Earned	Grade
LAWS 43208	Advanced Civil Procedure William Hubbard	3	3	179
LAWS 50202	Constitutional Decisionmaking Meets Substantial Research Paper Requirement	3	3	178
LAWS 52410	Geoffrey Stone Pretrial Litigation: Strategy and Advocacy	3	3	179
LAWS 81002	Barry Fields Strategies and Processes of Negotiation George Wu	3	3	175

Spring 2021

Course	Description	Attempted	Earned	Grade
LAWS 42603	Corporate and Entrepreneurial Finance Steven Neil Kaplan	3	3	173
LAWS 43101	Labor Law James Whitehead	3	3	175
LAWS 47101	Constitutional Law VII: Parent, Child, and State Emily Buss	3	3	176
LAWS 53271	Contract Drafting and Review Joan Neal	3	3	176

End of University of Chicago Law School

Date Issued: 06/06/2021

Page 2 of 2

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Office of the University Registrar
Chicago, Illinois 60637

Name: Jacob Edward Johnson
Student ID: 10426633

Scott C. Campbell, University Registrar

Undergraduate

Degrees Awarded

Degree: Bachelor of Arts
Confer Date: 06/11/2016
Degree Honors: With General Honors
Comparative Human Development (B.A.) With Honors

Academic Program History

Program: The College
Start Quarter: Autumn 2013
Program Status: Completed Program
Comparative Human Development (B.A.)

External Education

Oak Park and River Forest High School
Oak Park, Illinois
Diploma 2013

Dominican University
River Forest, Illinois
Master of Arts 2018

TEST CREDITS APPLIED TOWARD BACHELOR'S DEGREE 500

Beginning of Undergraduate Record

Autumn 2013

Course	Description	Attempted	Earned	Grade
HIST 13001	History of European Civilization-1	100	100	A-
HUMA 12300	Human Being And Citizen-1	100	100	A-
HUMA 19100	Humanities Writing Seminars	0	0	P
MATH 15100	Calculus-1	100	100	B+
PHSC 13500	Chemistry & The Atmosphere	100	100	A

Winter 2014

Course	Description	Attempted	Earned	Grade
HIST 13002	History of European Civilization-2	100	100	A
HUMA 12400	Human Being And Citizen-2	100	100	A-
HUMA 19100	Humanities Writing Seminars	0	0	P
MATH 15200	Calculus-2	100	100	B
RLST 12000	Introduction to the New Testament	100	100	B+

Spring 2014

Course	Description	Attempted	Earned	Grade
BIOS 20150	How Can We Understand the Biosphere?	100	100	A
BIOS 20151	Introduction to Quantitative Modeling in Biology Basic	100	100	A-
CMLT 22302	Lit of Christian East: Late antiquity, Byzantium, Medieval Russ	100	100	P
HUMA 12500	Human Being And Citizen-3	100	100	A-
HUMA 19100	Humanities Writing Seminars	0	0	P

Honors/Awards

DEAN'S LIST 2013-14

Autumn 2014

Course	Description	Attempted	Earned	Grade
CHDV 20000	Intro. to Human Development	100	100	A
CHDV 21000	Cultural Psychology	100	100	A
CHDV 21800	Primate Behavior and Ecology	100	100	A-
SOSC 15100	Classics Soc/Polit Thought-1	100	100	B+

Winter 2015

Course	Description	Attempted	Earned	Grade
ANTH 25245	Human Rights in (Post) Conflict Settings	100	100	A-
CHDV 20209	Adolescent Development	100	100	B
PHSC 13600	Natural Hazards	100	100	A-
SOSC 15200	Classics Soc/Polit Thought-2	100	100	B+

Spring 2015

Course	Description	Attempted	Earned	Grade
CHDV 26250	Governing the Body, Health and Illness	100	100	A
CHDV 29800	BA Honors Seminar	100	100	A-
SOSC 15300	Classics Soc/Polit Thought-3	100	100	A-
TAPS 10200	Acting Fundamentals	100	100	A

Honors/Awards

DEAN'S LIST 2014-15

Summer 2015

Course	Description	Attempted	Earned	Grade
BIOS 13125	Ecology and the Environment	100	100	A-

Autumn 2015

Course	Description	Attempted	Earned	Grade
CHDV 20101	Applied Statistics in Human Development Research	100	100	A-
CHDV 27950	Evolution and Economics of Human Behavior	100	100	A-
CHDV 30301	Research on Contextualized Learning, Cognition, and Development	100	100	A
SPAN 10200	Beginning Elementary Spanish-2	100	100	B+

Winter 2016

Course	Description	Attempted	Earned	Grade
CHDV 20100	Hum Dev Resch Designs In Soc Sc	100	100	A-
CHDV 29900	Honors Paper Preparation	100	100	A
CRES 27008	Black in the City	100	100	P
SPAN 10300	Beginning Elementary Spanish-3	100	100	B

COLLEGE LANGUAGE REQUIREMENT COMPLETED

Date Issued: 05/19/2021

Page 1 of 2

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Chicago, Illinois 60637

Name: Jacob Edward Johnson
Student ID: 10426633

Scott C. Campbell, University Registrar

Undergraduate

Spring 2016

Course	Description	Attempted	Earned	Grade
CHDV 25120	Child Development and Public Policy	100	100	B+
CMST 23906	Latin American Cinema: 1930 to the Present	100	100	P
CRES 20602	Interpreting Contemporary Unrest	100	100	P
PLSC 21007	The U.S. Presidency	100	100	A-

Honors/Awards

DEAN'S LIST 2015-16

Undergraduate Career Totals

Cumulative GPA:	3.645	Cumulative Totals	3700	3700
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End of Undergraduate



Date Issued: 05/19/2021

Page 2 of 2

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OFFICIAL ACADEMIC DOCUMENT



Key to Transcripts of Academic Records

1. Accreditation: The University of Chicago is accredited by the Higher Learning Commission of the North Central Association of Colleges and Schools. For information regarding accreditation, approval or licensure from individual academic programs, visit <http://csl.uchicago.edu/policies/disclosures>.

2. Calendar & Status: The University calendar is on the quarter system. Full-time quarterly registration in the College is for three or four units and in the divisions and schools for three units. For exceptions, see 7 Doctoral Residence Status.

3. Course Information: Generally, courses numbered from 10000 to 29999 are courses designed to meet requirements for baccalaureate degrees. Courses with numbers beginning with 30000 and above meet requirements for higher degrees.

4. Credits: The Unit is the measure of credit at the University of Chicago. One full Unit (100) is equivalent to 3 1/3 semester hours or 5 quarter hours. Courses of greater or lesser value (150, 050) carry proportionately more or fewer semester or quarter hours of credit. See 8 for Law School measure of credit.

5. Grading Systems:

Quality Grades

Grade	College & Graduate	Business	Law
A+	4.0	4.33	
A	4.0	4.0	186-180
A-	3.7	3.67	
B+	3.3	3.33	
B	3.0	3.0	179-174
B-	2.7	2.67	
C+	2.3	2.33	
C	2.0	2.0	173-168
C-	1.7	1.67	
D+	1.3	1.33	
D	1	1	167-160
F	0	0	159-155

Non-Quality Grades

- I **Incomplete:** Not yet submitted all evidence for final grade. Where the mark I is changed to a quality grade, the change is reflected by a quality grade following the mark I, (e.g. IA or IB).
- IP **Pass (non-Law):** Mark of I changed to P (Pass). See 8 for Law IP notation.
- NGR **No Grade Reported:** No final grade submitted
- P **Pass:** Sufficient evidence to receive a passing grade. May be the only grade given in some courses.
- Q **Query:** No final grade submitted (College only)
- R **Registered:** Registered to audit the course
- S **Satisfactory**
- U **Unsatisfactory**
- UW **Unofficial Withdrawal**
- W **Withdrawal:** Does not affect GPA calculation
- WP **Withdrawal Passing:** Does not affect GPA calculation
- WF **Withdrawal Failing:** Does not affect GPA calculation
- Blank:** If no grade is reported after a course, none was available at the time the transcript was prepared.

Examination Grades

- H Honors Quality
- P* High Pass
- P Pass

Grade Point Average: Cumulative G.P.A. is calculated by dividing total quality points earned by quality hours attempted. For details visit the Office of the University Registrar website: <http://registrar.uchicago.edu>.

6. Academic Status and Program of Study: The quarterly entries on students' records include academic statuses and programs of study. The Program of Study in which students are enrolled is listed along with the quarter they commenced enrollment at the beginning of the transcript or chronologically by quarter. The definition of academic statuses follows:

7. Doctoral Residence Status: Effective Summer 2016, the academic records of students in programs leading to the degree of Doctor of Philosophy reflect a single doctoral registration status referred to by the year of study (e.g. D01, D02, D03). Students entering a PhD program Summer 2016 or later will be subject to a

University-wide 9-year limit on registration. Students who entered a PhD program prior to Summer 2016 will continue to be allowed to register for up to 12 years from matriculation.

Scholastic Residence: the first two years of study beyond the baccalaureate degree. (Revised Summer 2000 to include the first four years of doctoral study. Discontinued Summer 2016)

Research Residence: the third and fourth years of doctoral study beyond the baccalaureate degree. (Discontinued Summer 2000.)

Advanced Residence: the period of registration following completion of Scholastic and Research Residence until the Doctor of Philosophy is awarded. (Revised in Summer 2000 to be limited to 10 years following admission for the School of Social Service Administration doctoral program and 12 years following admission to all other doctoral programs. Discontinued Summer 2016.)

Active File Status: a student in Advanced Residence status who makes no use of University facilities other than the Library may be placed in an Active File with the University. (Discontinued Summer 2000.)

Doctoral Leave of Absence: the period during which a student suspends work toward the Ph.D. and expects to resume work following a maximum of one academic year.

Extended Residence: the period following the conclusion of Advanced Residence. (Discontinued Summer 2013.)

Doctoral students are considered full-time students except when enrolled in Active File or Extended Residence status, or when permitted to complete the Doctoral Residence requirement on a half-time basis.

Students whose doctoral research requires residence away from the University register *Pro Forma*. *Pro Forma* registration does not exempt a student from any other residence requirements but suspends the requirement for the period of the absence. Time enrolled *Pro Forma* does not extend the maximum year limit on registration.

8. Law School Transcript Key: The credit hour is the measure of credit at the Law School. University courses of 100 Units not taught through the Law School are comparable to 3 credit hours at the Law School, unless otherwise specified.

The frequency of honors in a typical graduating class:

Highest Honors (182+)
0.5%
High Honors (180.5+)(pre-2002 180+)
7.2%
Honors (179+)(pre-2002 178+)
22.7%

Pass/Fail and letter grades are awarded primarily for non-law courses. Non-law grades are not calculated into the law GPA.

P** indicates that a student has successfully completed the course but technical difficulties, not attributable to the student, interfered with the grading process.

IP (In Progress) indicates that a grade was not available at the time the transcript was printed.

* next to a course title indicates fulfillment of one of two substantial writing requirements. (Discontinued for Spring 2011 graduating class.)

See 5 for Law School grading system.

9. FERPA Re-Disclosure Notice: In accordance with U.S.C. 438(6)(4)(8)(The Family Educational Rights and Privacy Act of 1974) you are hereby notified that this information is provided upon the condition that you, your agents or employees, will not permit any other party access to this record without consent of the student.

Office of the University Registrar
University of Chicago
1427 E. 60th Street
Chicago, IL 60637
773.702.7891

For an online version including updates to this information, visit the Office of the University Registrar website: <http://registrar.uchicago.edu>.

Revised 09/2016

UNIVERSITY OF MICHIGAN LAW
Legal Practice Program
625 South State Street
Ann Arbor, Michigan 48109-1215

Patrick Barry
Clinical Assistant Professor of Law
Director of Digital Academic Initiatives
Visiting Lecturer (University of Chicago)

June 11, 2021

The Honorable Elizabeth Hanes
Spottswood W. Robinson III & Robert R. Merhige,
Jr., U.S. Courthouse
701 East Broad Street, 5th Floor
Richmond, VA 23219

Dear Judge Hanes:

Jake Johnson created my favorite class. It was the summer of 2020, right around when the worldwide total of COVID-19 cases was approaching ten million. Spirits were low. Hospitalizations were high.

But rather than throw in the intellectual towel, Jake approached me about setting up an independent study to make up for some of the professional development training that he was now going to miss out on because of cancelled or at least curtailed summer internship programs. Jake wasn't angling to receive academic credit or any other compensation. He simply wanted to become a better legal writer and editor.

The weekly sessions he organized turned out to be fantastic. He always came prepared. He always came motivated. And his enthusiasm for both the mechanics and strategy of effective advocacy was contagious. Our hour together every Wednesday was a tremendous bright spot during an otherwise bleak set of months.

It also showed me that Jake has a wonderful combination of drive, generosity, and conscientiousness—qualities that I think will make an extremely valuable addition to your chambers. He not only produces high-quality, deadline-hitting work of his own; he also helps the people around him stay on task. For example, one of Jake's friends decided to join us for the independent study. Trying to juggle a bunch of other commitments, this friend repeatedly relied on Jake to remind him about due dates, set up a drafting schedule, and provide in-depth edits on everything he wrote. I have no doubt that Jake would be willing to do something similar for other clerks. He is very much a team player.

For all these reasons and plenty more I'd be happy to share should you decide to give me a call, I hope you will consider Jake for one of your next open clerkship positions. Working with him during that independent study and then again this past year in a course called "Editing and Advocacy" has been an absolute joy. He has a lively mind and an impressive commitment to the craft of legal analysis and decision making. Best of all, he is at once kind, funny, and full of integrity. I'm going to miss having him on my class roster next term.

Sincerely,

/Patrick Barry/

Patrick Barry
Clinical Assistant Professor of Law
Director of Digital Academic Initiatives
Visiting Lecturer (University of Chicago)

Patrick Barry - barrypj@umich.edu - 734-763-2276

Jonathan Lowy
Vice President, Legal and Chief Counsel
Brady United Against Gun Violence
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June 08, 2021

The Honorable Elizabeth Hanes
Spottswood W. Robinson III & Robert R. Merhige,
Jr., U.S. Courthouse
701 East Broad Street, 5th Floor
Richmond, VA 23219

Dear Judge Hanes:

I am writing to recommend Jacob Johnson for a clerkship in your chambers. I am Vice President, Legal and Chief Counsel of Brady United Against Gun Violence, where I have been privileged to practice for about 24 years, defending gun laws and representing victims and survivors of gun violence. I supervised Jake during his time as an intern at Brady United last summer.

I recommend Jake very highly. He's very bright, hard-working, with a maturity beyond his years. I expect great things of him in his legal career. I have come to know Jake as a diligent worker who is not afraid to take on new challenges independently. During his time at Brady, Jake drafted memos on multiple cases, on a variety of issues. Among other cases he worked on a novel products liability lawsuit, a complex public nuisance suit against multiple gun dealers and manufacturers, and helped prepare filing of new matters.

While at Brady, Jake also worked on a law review article examining *District of Columbia v. Heller* and a research project addressing the potential liability of hate groups for violent crimes committed by their members. These assignments asked Jake to research state statutory law, state common law, federal statutory law, and federal constitutional law. His writing was both comprehensive and predominantly free from errors. His writing consistently improved over the summer and will continue to improve as he gets more opportunities to apply his legal reasoning skills.

Perhaps his most valuable quality, Jake is his attitude. I always tell interns to ask questions and reach out for advice; Jake actually did. More than that, he thought deeply about matters, and brought his own ideas and perspectives. He is also a consummate team player, helping out where needed. He has a can do attitude, and is reliable. He shows up to meetings on time, actively participates in legal discussions, volunteers for work assignments, and makes meaningful contributions towards fostering a positive work environment. He is also a nice guy, who gets along well with everyone, and brings good humor to the workplace, while working hard. I would hire him in a heartbeat.

Jake's qualities would make him an ideal clerk. He is more than capable of doing the hard work – writing and research needed – but also will help other clerks, and has the maturity to provide ideas to those senior to him (like judges), without any arrogance or sense that he must be listened to. His positive attitude and hard work ethic will provide the right mix of getting things done, while fostering an effective team and office. Jake was able to accomplish this despite the challenges of his summer – which due to Covid was all remote and on Zoom. Those attributes should be all the more effective in whatever normal we find ourselves in when he clerks.

I am happy to answer any more questions you have.

Best,
Jonathan Lowy

Lowy Jonathan - jlowy@bradyunited.org - 202-370-8104

Erin Miller

Harry A. Bigelow Teaching Fellow, Lecturer in Law
The University of Chicago Law School
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June 09, 2021

The Honorable Elizabeth Hanes
Spottswood W. Robinson III & Robert R. Merhige,
Jr., U.S. Courthouse
701 East Broad Street, 5th Floor
Richmond, VA 23219

Dear Judge Hanes:

I am a Harry A. Bigelow Fellow and Lecturer in Law at the University of Chicago Law School. I had the pleasure of instructing Jake Johnson in the year-long, first-year course Legal Research & Writing during 2019-2020. He was a remarkable student and, based on my observations of his work and conduct in my course, I believe that he would be an excellent judicial clerk. I strongly recommend that you hire him.

Jake demonstrated solid research, writing, and oral communication skills in all of his work for my course—and impressively improved over time. My students were assigned, over the course of the year, to write two legal memos and a brief, and then to defend the brief in an oral argument. Jake's first memo in the fall already earned him an excellent grade of 178. (At Chicago, a 178 is slightly above the median. For context, only about one-third of students in my class received a higher grade.) But his spring brief likely would have received an even higher grade, had grading not been changed to pass/fail in light of the COVID-19 pandemic. The brief contained many careful, very clear discussions of the facts and case law. His oral argument defending the brief was even better: he demonstrated confidence, excellent command of the case law, and flexible thinking on his feet. These improvements were all the more impressive in light of the new stresses law students were facing while adapting to remote learning and the realities of pandemic life. Only one or two other students in my class improved as much as Jake did.

However, Jake's improvement was no surprise to me because of his dedication to getting better. After he got feedback from me on a first draft of his writing, I saw every change I'd suggested implemented in his final draft. He routinely stayed after class or came to office hours to ask questions about legal writing—and I could tell that he genuinely wanted to know the answers. He even requested extra bluebooking exercises when he felt that his citations weren't up to par. I expect that as a clerk he would demonstrate the same sort of diligence and dedication to getting the law exactly right.

At the same time, Jake's exceptional improvement was nothing short of extraordinary given the unimaginable hardship that he suffered in 2020. Halfway into the spring term, both of his parents were murdered during a home invasion, with no immediate suspect. Jake weathered this tragedy with exceptional strength and grace. He was offered many academic accommodations, including a leave of absence, but he took no more than a week's extension on his brief and argument. And, given that these work products were delivered about a month after the death of his parents, I was blown away by their quality.

I would be remiss, though, not to mention Jake's shining personality. He is a deeply sincere, caring, friendly, and social person. During his grief, he would always ask how I was doing and express gratitude for any small help I'd given. Every time I have encountered him since then, he similarly always expresses concern for my wellbeing. And he seems, somehow, to always have a sunny and light-hearted outlook—but one that seems wholesome and grounded, not blissfully ignorant. Perhaps because of these qualities, I found that he had an unusual ability to pull his classmates together, and even lead them, for group exercises. Given all of these qualities, I expect that he would be very easy for you and his co-clerks to work with.

Jake's clerkship would likely be a first step in a bright public interest career. His father was a lawyer in public service, and Jake seems interested in following in his footsteps. Jake has dedicated most of his life before law school to public interest causes, such as teaching grade schoolers in Chicago. Last summer, Jake worked for a civil rights firm. My sense is that he would ideally like to be a litigator for a small boutique firm that focuses on helping criminal defendants and/or members of the working class.

Jake is an earnest, dedicated, warm-hearted, and talented legal writer who has prevailed in law school against the most tremendous odds a student can face. I predict he would be of great service to your chambers. Don't miss the opportunity to hire

Erin Miller - elmiller@uchicago.edu

him!

Sincerely,
Erin L. Miller

For reference on his transcript, the course is called "Lawyering" in the spring.

Erin Miller - elmiller@uchicago.edu

JACOB E. JOHNSON
WRITING SAMPLE

Description:

This writing sample was prepared over the course of one week for a law school elective course. The class requires students to write an opinion on a new case each week using precedent created from prior decisions. The case at issue here deals with the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution. In regards to the context, thirteen opinions dealing with contentious issues under the Equal Protection Clause have already been decided. Much of that case law is detailed in the opinion.

The case at issue here, *North v. Newsome*, centers around a New Orleans city employee life insurance policy that grants beneficiaries of female employees \$10,000 more than beneficiaries of male employees. Petitioner argues the mandatory life insurance policy violates the Equal Protection Clause.

This writing sample is a representation of my work and ideas. No one has edited the writing in this piece. The legal issues were discussed with classmates during my outlining process. These discussions, similar to conversations with classmates after a lecture, served as helpful ways for me to process the ideas and convey them clearly in writing. I hope you enjoy this piece. Please do not hesitate to reach out if you are interested in additional writing samples. Thank you.

Cite as: 2 U.S. 222 (2008)

Opinion of the Court

NORTH, PETITIONER V. NELLIE NEWSOME,
IN HER OFFICIAL CAPACITY AS THE
ADMINISTRATOR OF THE CITY OF NEW
ORLEANS BENEFITS PROGRAM

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS
FOR THE FIFTH CIRCUIT.

No. 2–0014. Argued February 15, 2008—Decided February 22, 2008.

JUSTICE JOHNSON delivered the opinion of a unanimous Court.

A city employee in New Orleans is required to pay into a joint life insurance program. If a male city employee dies while employed by the city, his heirs receive \$40,000 in death benefits. If a female city employee dies while employed by the city, her heirs receive \$50,000 in death benefits. The city has invoked the greater payout for female employees to ensure that the total expected benefits of women is equal to the total expected benefits of similarly-situated men. The United States District Court for the Eastern District of Louisiana found the unequal payout scheme unconstitutional under the Equal Protection Clause. The Court of Appeals for the Fifth Circuit agreed. Because this case deals with a discriminatory policy along the lines of sex, we granted certiorari.

We now REVERSE.

I

The Creole City takes care of its employees. New Orleans guarantees pension benefits for the entire life of a retired employee. Unfortunately, not all dedicated municipal employees are lucky enough to retire; some men and women die while in service to their great city. Therefore, the City Council of New Orleans instituted a mandatory life insurance program to care for the unfortunate families left behind.

Under the city's life insurance program, each employee contributes a fixed amount based on his or her age and yearly salary. The city matches each employee's contribution. If the employee dies while still in service to the city, his or her beneficiaries will receive a payment. If the employee is male, the payment is \$40,000. But if the employee is female, the payment is \$50,000. The City of New Orleans justifies this payment discrepancy by citing that women live an average of seven years longer than men. Because the New Orleans pension program provides retirement benefits for the rest of a retired employee's life, the heirs of a deceased female employee would be paid more on average than those of a male employee. We therefore understand New Orleans's employee life insurance program as compensating beneficiaries of a

female employee for the additional pension benefits she expected to receive by living longer than her similarly-situated male counterpart.

Ned North, a New Orleans police officer, was killed on duty in a high-speed car chase on January 10th, 2015. His children consequently collected the \$40,000 death benefit. In substantial financial need after losing their father, North's children were frustrated by what they perceived as a lack of equality in the law. North's children brought an action in federal district court alleging that the lower death benefits for men were a violation of the Equal Protection Clause.

Nellie Newsome, administrator of the life insurance program, argued that a sex-blind benefit program would violate the rights of women. The district court rejected Newsome's argument and found in favor of Ned North's heirs. On appeal, the Fifth Circuit agreed. Because this case deals with a sex based discriminatory policy, an issue the Circuits are split on, we granted Certiorari, and now REVERSE.

II

Under the Equal Protection Clause, a state may not “deny to any person within its jurisdiction the equal protection of the laws.” U.S. Const. amnd. XIV § 1. Thus, “the default of the Equal Protection Clause is that “when a statute gives protection to one group of persons, but not another, the law does not protect equally,” and therefore the law submits itself to judicial scrutiny. *Gold v. Georgia State University*, 2 U.S. 106, 108 (1976) (citing *Dillworth v. Danforth*, 2 U.S. 38, 42 (1947)). Yet, “[w]e have often noted that a government must be allowed to function.” *Id.* at 108 (citing *Alexander v. Alabama Milk Board*, 2 U.S. 1, 6 (1886)).

This Court's Equal Protection jurisprudence has, as a fine wine, matured over time. Originally this Court applied a test developed in *Alexander v. Alabama Milk Board*, 2 U.S. 1 (1886). A foundational decision in this Court's history, the *Alexander* test asked if the distinction in protections was “justified by a legitimate state interest” and if the discrimination was “reasonably narrowed to achieve that interest.” *Barker v. Boston*, 2 U.S. 19, 21 (1919) (quoting *Alexander*, 2 U.S. at 10). Unfortunately, the *Alexander* test was found to lack predictive utility. *Edison v. Eberhart*, 2 U.S. 63, 83 (1967) (Shah, J., dissenting). As a result, this Court expanded and redefined its approach in *Gold v. Georgia State University*, 2 U.S. 106 (1976).

The *Gold* standard requires the Court to ask “(1) whether the statute offers unequal protections to a particular group expressly or by effect. If so, then (2) we identify a “justified state interest” or interests the state puts forward or which are plausibly asserted by the record as the ends of the statute. Tailoring is determined by the whole impact of the law or policy—both the benefits and harms. We do this by (3) analyzing any groups identified expressly or by effect, and (4) we consider the size, scope, and history of the group. It is not the case that any of these factors may always be dispositive.” *Gold*, 2 U.S. at 110.

In *Gold*, a state university policy of separating dorms by sex was found constitutional. There, the balancing of harms and benefits boiled down to the stigma females faced by being excluded weighed against the state's interest in efficiency and protecting the welfare of its students. *Id.* at 122-23. Because the state offered identical accommodations, this Court did not view the deprivation of a student's choice of where they live as sufficient to overcome the

importance of efficient allocation of resources and the protection of students' safety. *Id.* Similarly, in *Holloway v. Harmon*, 2 U.S. 124 (1980), the efficient use of state resources outweighed the economic loss and potential hardships of migratory families. Consequently, the Court upheld an Indiana ban on recent migrants collecting the heightened Indiana welfare rate immediately upon arrival. *Id.* at 136.

Economic considerations also played a significant factor in *Johnson City v. Juarez*, 2 U.S. 154 (1993). There, a Texas town banned the employment of illegal immigrants in an effort to defend against the severe effect an influx of illegal migrants had on employment. Even though the Court in *Johnson City* found the policy to create significant economic harms for illegal immigrants, that harm could not overcome the benefit of stabilizing the job market for current, documented residents. *Id.* at 168.

In *Kent v. Kansas State University*, benefits relating to diversity and equity figured prominently in the Court's decision to uphold an affirmative action program at Kansas State University. 2 U.S. 170 (1995). The Court recognized the harms suffered by those not identified as minorities eligible for special treatment in admissions decisions, but found the harms reasonable in light of the lasting effects of state-sponsored discrimination towards Black, Hispanic and Native American communities. The Court was not convinced that the harms suffered by non-minorities, due to the unequal treatment of the admissions policy, were likely to be realized. Additionally, the benefits the discriminatory policy furthered were significant and clearly correlated with the policy at issue. *Id.* at 190.

Iredell v. Indiana marked a shift in the Court's reasoning. 2 U.S. 138 (1988). In adjudging a statewide Indiana policy that allowed counties to control the amount of local tax revenue dedicated to public schools, this Court rejected the notion that equal *protection* of the laws equated to equal *treatment* of the laws. *Id.* at 141. The Court's decision in *Iredell* rested on the idea that the Equal Protection Clause does not encumber state's with a "positive obligation to provide the same benefits to all persons." *Id.* at 142. Instead, "[s]tate and local governments are allowed to furnish different services at the direction of their citizens, so long as within those jurisdictions, individual locales do not unjustifiably discriminate." *Id.* at 153. Because children in each school district were afforded the same protections by the state, this Court found no constitutional violation. *Id.* at 151.

Most recently, this Court held constitutional a statewide policy giving discretion to local election boards in deciding their own protocol for counting ambiguous ballots. *Low v. Larue*, 2 U.S. 190 (1997). Echoing *Iredell*, the Court reasoned that "[a]n equal protection claim is only implicated when a government treats people differently within its jurisdiction." *Id.* at 204. Even though the impact of the Louisiana election policy was unequal across counties, the Court made clear that the *Gold Standard* is concerned with the unequal protection of the law rather than its discriminatory impact. *See Id.* ("State governments are free to allow their subsidiary governments to adopt different policies without violating the Equal Protection Clause.") The Court recognized the slippery slope of creating positive obligations on the state to ensure the exact same rules across all localities. *See Iredell*, 2 U.S. at 142.

Importantly, in *Iredell*, *Johnson City*, and *Low*, the Court did not decide the case based on the discriminatory *impact* of the state action, but rather whether the discrimination in the law *itself* was a violation of the Equal Protection Clause. In *Iredell*, though the Court noted that poor minority communities would be disproportionately *harmed* by the state-wide school funding policy, the way in which the policy *targeted* individuals was equal between poor-minority and wealthy-nonminority groups. *Id.* at 150. Likewise, in *Johnson City*, the Court made a distinction between discriminatory treatment versus impact. “When a statute has the impact of causing private actors to act in a racist way, the statute cannot be found unconstitutional on only those grounds.” *Johnson City*, 2 U.S. at 163-64. While the ordinance in *Johnson City* created discriminatory consequences for Hispanics, it did not treat Hispanics any differently than other groups subject to the ordinance’s enforcement. In *Low*, the Court was not concerned with election controversies that may have resulted from different local election board policies. 2 U.S. at 199. There, the Court focused instead on whether the Louisiana policy treated individuals of the state differently. Since each county had the freedom to decide if and when ambiguous ballots would be counted in statewide elections, the Court viewed this equal deference to counties as equal treatment, sufficient to pass Equal Protection muster. *Id.* at 202.

III

We begin today’s analysis by identifying whether the state offers unequal protection to a particular group. *See Gold*, 2 U.S. at 110.

A

Under the New Orleans employee life insurance program, male employees see less in death benefits that pass to their heirs than female employees. As a result, we recognize that male city employees are treated differently under the life insurance program and therefore are being afforded less protections than their female counterparts.

B

Our second task is to identify a justified state interest that is furthered by the discriminatory policy. The city’s asserted interest in enacting its unequal death benefits policy is “[t]o ensure that the total expected benefits of women is equal to the total expected benefits of otherwise similarly situated men. . . .” A city policy that seeks to create equality amongst its employees is undoubtedly a justified state interest. Indeed, equality was one of the main drivers in passing the Equal Protection Clause. *Alexander*, 2 U.S. at 12; *see also Kent*, 2 U.S. at 174 (“[w]e recognize it would be in the state’s interest to ensure *equality* of opportunity...”)(emphasis added).

New Orleans has chosen to use gender as a proxy for age, recognizing the statistical inequality of life expectancy between men and women. As explained above, New Orleans guarantees city employees’ pension payments for life. The payment amount is dependent on the number of years of service and the employee’s income. Similarly-situated male and female employees could expect the same amount per payment. But female employees could expect more money in the aggregate as they are expected to live longer. To account for this inequality in expected retirement benefits, the city has chosen to offer a flat rate of \$10,000 extra to beneficiaries of female employees. Here we understand the city as attempting to create equality

where there had previously been inequality: men and women employee heirs receiving the same in death benefits even though the heirs of women employees were likely to receive significantly more in pension payouts should the woman have lived to her full age.¹

Another state interest New Orleans pursues is financial in nature. We have long recognized the efficient use of state resources as a legitimate state interest. *Gold*, 2 U.S. at 123; *see also Fellers v. Fellers*, 2 U.S. 94, 101-102 (1971).

In this case, the Court understands the City of New Orleans to be playing the odds in its economic favor. The city recognizes that male employees are more likely to die prior to retiring than female employees. In addition to male life expectancy being lower, male city employees are placed in riskier positions and on average engage in riskier behavior.² The evidence of this is well established. Car insurance policies and life insurance policies are usually more expensive for men than for women.³ Insurance agencies make their money by accurately quantifying risk; their prices reflect the likelihood that they will need to payout on the insurance they provide. The City of New Orleans takes on a smaller economic risk by paying less in death benefits to the group more likely to die while employed by the city. Ultimately, this policy doles out limited resources in an economically-savvy way.

C

Next we look to the harms and benefits of the discriminatory policy. Here we find an issue that cuts to the crux of our decision today. This is the difference between discriminatory *treatment* versus discriminatory *impact*. Discriminatory treatment is concerned with those groups of individuals the law applies to. In other words, the harms and benefits accrued by the persons named in the law. Alternatively, discriminatory impact encompasses all the harms and benefits that may be secondary or tertiary to the individuals named in the law.

As this Court has seen, many laws have both discriminatory treatment and discriminatory impact. *See Kent v. Kansas State University*, 2 U.S. 170, 177 (1975) (examining the consequences of an affirmative action admissions policy for graduate school applicants and future dental patients); *Corrigan v. Connecticut*, 2 U.S. 31, 38 (1928) (identifying harms and benefits to convicted felons and alcohol consuming patrons stemming from a prohibition on felons obtaining employment as bartenders). But treatment and impact are not created equal. While every person who is treated by a certain law is impacted by that law; not every person who is impacted by a law is treated under that law.

Johnson City is a prime example. The ban on employment of illegal immigrants contained discriminatory treatment of illegal immigrants versus legal citizens. *Johnson City*, 2 U.S. at 155. That same ban also led employers to practice greater caution in hiring Hispanic

¹ In the majority of cases, the aggregate of the seven additional years of pension payouts would have been far larger than \$10,000.

² Robert Shmerling, *Why men often die earlier than women*, Harvard Health Blog (Feb. 19, 2016) <https://www.health.harvard.edu/blog/why-men-often-die-earlier-than-women-201602199137>

³ Nupur Gambhir & Amanda Shih, *Average Life Insurance Rates: how costs change by age, terms, and policy size*, Policygenius.com (Feb. 17, 2021) <https://www.policygenius.com/life-insurance/life-insurance-cost/>

applicants. *Id.* at 156-57. Hispanic citizens were not named in the law and therefore suffered no discriminatory treatment. *Id.* Instead, the law caused secondary harms: the racial profiling of Hispanic citizens by employers. *Id.* at 164. The harm to Hispanic citizens failing to gain employment is an example of the discriminatory impact of the law.

The problem is, it is not in the best interest of the Court's time—or even possible—to know all of the groups of people who will be impacted by a law both primarily and secondarily, such as Mr. North's children. This Court and lower courts in future cases could speculate all day about the harms and benefits to people who are not directly treated under a particular law. This mental exercise has little to no predictive power. In applying the Equal Protection Clause, lower courts and legislatures need a decisive legal test—one that involves only the known and easily ascertainable groups at hand; the groups who are named by a particular law.

For the sake of the discussion below, we will define all persons treated under, and impacted by, a law as *directly impacted*. We will define all persons who are impacted by, but *not* treated under, a law as *indirectly impacted*.

Thus, we will categorize the stated harms and benefits as those that arise from discriminatory *treatment* of the law versus those that arise from discriminatory *impact*. In order to do this, we must distinguish the harms and benefits incurred by those who are *directly impacted*, from those who are *indirectly impacted* by the law.

i

While there may be many potential harms that stem from the law at issue, many of these harms will not be suffered by those directly impacted by the law—specifically, male and female employees of the city. In this case, those who are indirectly impacted by the New Orleans law are most likely to be the spouses, family members, and children of these city employees. To further elaborate, under the New Orleans life insurance program, when a female employee dies it is most often her male spouse who will collect her death benefits.⁴ Conversely, when a male city employee dies, his female spouse will most often collect the death benefits.

For example, a newly-widowed mother is left to care for her fatherless children with less funds. Whereas a newly-widowed father is given more to care for his motherless children. This inequality is problematic when we consider the gender pay gap in New Orleans. Women, on average, including city employees, make 79 cents for every dollar men are paid in the same position with reasonably similar experience and education.⁵ Even worse, as the City of New Orleans admits, women are expected to live longer, therefore they require greater resources in the aggregate.

⁴ New Orleans Yesterday and Today: Population and Land Use Trends (New Orleans had 40% married households in 2008). <https://nola.gov/getattachment/080c091d-7caf-441c-96e2-671d5662c8d1/Vol-3->

⁵ Jessica Williams, *Rules Aimed at Addressing Gender Pay Inequity Passed By New Orleans City Council*, Nola News (Oct. 17, 2019) https://www.nola.com/news/politics/article_c4b57062-f0ef-11e9-8cb7-475f0fc7cd44.html

Adding insult to injury, women are far more likely to be stay-at-home caregivers than men.⁶ Not only are stay-at-home mothers forced into the workforce when their spouse passes away, but they are also given less by the city in death benefits to keep their family going in a time of turmoil.

Of course, these potential harms rest on the assumptions that the city employee's spouse is still alive at the time of their death and that he or she is still married to their spouse. Often both of these assumptions are not true. In the absence of a living spouse, the heirs suffer the impact of the laws discrimination between male and female city employees. heirs of single fathers receive a lower death benefit as compared to heirs of single mothers.

However, as stated above, the court is only interested today in the harms suffered by those who are *directly impacted* by the law. In this case, the court acknowledges the harms suffered by male employees of the City of New Orleans.

Male employees are directly harmed by the mandatory life insurance policy. They pay into the program at the same rate and amount as their similarly-situated female counterparts, but their beneficiaries receive less in the way of benefits the program offers. The heirs of Ned North are receiving less simply because it was their father who worked for the city instead of their mother. But this Court refuses to view the harm suffered by Mr. North's heirs as an example of discriminatory treatment. Indeed, Mr. North's children did not pay into the inequitable policy, they merely received a slightly smaller death benefit. Therefore, perhaps the only individuals harmed are male city employees because they are specifically treated differently under the policy. Male employees are asked to pay equally for a policy that will deliver unequal benefit.

Despite the potential harms suffered by those who are indirectly impacted by the program—namely the spouses and heirs of city employees—these harms do not factor into the Court's equal protection analysis today. In adjudging a law under the Equal Protection Clause, the Court is only interested in the treatment of those persons named under the law, not the potential impacts of the law on persons unnamed. Because these indirect harms are too speculative, incorporating such harms into the *Gold* analysis creates unnecessary ambiguity. Additionally, doing so may render a law unconstitutional due to harms that are never realized. By cabining the harms analysis to those harms incurred by persons treated under the law, the *Gold* test secures its predictive value for future cases by refraining from an inexact exercise of speculation.

ii

In addition to the harms created by the discriminatory policy, this Court also examines the benefits created.

Most saliently, the benefit of this policy is exactly that: the increased benefit promised to female employees even though male and female employees pay the same amount into the program. A larger payout for the beneficiaries of women carries the benefit of incentivizing

⁶ *Who are family caregivers?*, American Psychological Association
<https://www.apa.org/pi/about/publications/caregivers/faq/statistics#:~:text=The%20percentage%20of%20family%20or,versus%2017.4%20hours%20per%20week>. (Females make up 53-68% of family or informal caregivers.)

women to seek employment with the city. The unequal benefits thus increase female participation in the work force. We have noted that pursuit of equality is a legitimate state interest, *supra*, and encouraging female participation in the work force helps to cure issues of gender disparity in employment.

We also note that children of single mothers-- a group five times more likely than children of single fathers-- are in greater need.⁷ Under the enacted group life insurance program, children in greater need are left with a greater slice of the pie. The heirs who are most financially at-risk get \$10,000 more in death benefits. But as explained above, the Court does not factor this benefit into its analysis today since such a benefit is only speculative. In plenty of circumstances, female employees may have no children and therefore the stated benefit may never be realized. In these circumstances, the payout may go to a sister, cousin, or friend. The reality being that the Court can have no way of knowing who in the end will actually receive the higher payout.

D

In this case, the Court finds that special protection does not apply because men are being afforded less protection under the program and men are not a historically disenfranchised group. Although in some instances, women will bear the burden of receiving a lower death benefit as the beneficiary of their male spouse, we cannot be sure that this will always be the case. In fact, very often it will not be. Mr. North's case before us is a good example of a case where women are not disproportionately harmed by the program. If the Norths had provided evidence showing that actually women are being targeted by the mandatory program, perhaps special protections would apply. But the Norths provided no such evidence and the Court refuses to speculate about such possibilities in adjudging the constitutionality of a law under the Equal Protection Clause.

Following the precedent set in *Iredell*, *Johnson City*, and *Low*, we choose not to weigh the impacts of the law when assessing its constitutionality because the impacts are too speculative in nature. This case exemplifies a situation in which the Court cannot be sure whether the policy's impact will more likely be beneficial for one group or harmful to another. To what extent spouses, children or other relatives will benefit or be harmed is an unknown to this Court. All we can do is speculate. Therefore, we must refine our attempt to weigh the harms and benefits by simply looking at the unequal treatment of the law. This is a narrower approach that solely considers the discrimination of male and female city employees—those to whom the law applies.

In light of this narrow approach, we recognize that men receive less in benefits, but they are not a historically targeted group and do not garner special attention under the *Gold* standard. We also recognize that the city has made a conscious choice to give equal benefits to their dedicated female employees. For the reasons laid out above, while the monetary inequality of death benefits is unequal at face value, it is likely to create more instances of financial equality when life expectancy differences between men and women are taken into account. The minimal harm suffered by male employees— paying the same amount for a smaller promised payout— is

⁷ *The Majority of Children Live With Two Parents, Census Bureau Reports*, Census.gov
<https://www.census.gov/newsroom/press-releases/2016/cb16-192.html>

not enough to outweigh the benefits of economic efficiency and gender equity created by the program.

IV

Although the discrepancy in life insurance benefits the potential to have a serious harmful impact on women more than men, this Court refuses to speculate on harms that arise from impact, rather than treatment, of the law. Instead, the Court today weighed the benefits and harms for those directly treated under the policy at hand.

Here, that is the benefits to female city employees versus the harms to male city employees. On the whole, economic efficiency and the city's interest in creating equity for female employees outweighs the harm of a limited decrease in death benefits to male city workers.

We therefore vacate the judgment of the Court of Appeals for the Fifth Circuit and remand the case for proceedings consistent with this opinion.

It is so ordered.

Applicant Details

First Name **Charles**
 Last Name **Jones III**
 Citizenship Status **U. S. Citizen**
 Email Address jones.c22@law.wlu.edu
 Address

Address
Street
23 Wheatland Circle
City
Lebanon
State/Territory
Pennsylvania
Zip
17042
Country
United States

Contact Phone Number **7176399054**

Applicant Education

BA/BS From **Juniata College**
 Date of BA/BS **May 2019**
 JD/LLB From **Washington and Lee University School of Law**
http://www.nalplawsonline.org/ndlsdir_search_results.asp?lscd=54704&yr=2009
 Date of JD/LLB **May 13, 2022**
 Class Rank **Below 50%**
 Law Review/Journal **Yes**
 Journal(s) **Washington and Lee Law Review**
 Moot Court Experience **Yes**
 Moot Court Name(s) **American Bar Association Appellate Advocacy**
D.C. Regional Competition
John W. Davis Moot Court Competition

Bar Admission

Prior Judicial Experience

Judicial
Internships/ **No**
Externships
Post-graduate
Judicial Law **No**
Clerk

Specialized Work Experience

Recommenders

Weiss, Allison
aweiss@wlu.edu
MacDonnell, Timothy
macdonnell@wlu.edu
540-458-8224

References

Timothy MacDonnell:
540-460-8037
macdonnell@wlu.edu

Franklin Runge:
540-458-8547
frunge@wlu.edu

Allison Weiss
540-458-8382
aweiss@wlu.edu

**This applicant has certified that all data entered in this profile and
any application documents are true and correct.**

16 Houston Street
Lexington, VA 24450

The Honorable Elizabeth W. Hanes
Magistrate Judge
United States District Court for the Eastern District of Virginia
Spottswood W. Robinson III and Robert R. Merhige, Jr., Federal Courthouse
701 East Broad Street
Richmond, VA 23219

Dear Judge Hanes,

I am a third-year law student at Washington and Lee University and I am applying for a two-year clerkship beginning in 2022. I am interested in clerking because I have a strong desire to engage with complex legal issues through challenging legal research and writing. Additionally, I have a strong interest in litigation, and I would be honored to have the opportunity to use my analytical and writing skills to contribute to the judicial process.

I am skilled at analytical problem solving and conveying information through both writing and speaking. In my summer position with the Prince William County Attorney's Office, I researched issues related to numerous areas of the law, including First Amendment law, labor and employment, negligence, county immunity from tort claims, and statutory analysis. I conveyed the results of my research to my colleagues through legal memorandums and oral presentations. I also had the opportunity to refine my research into written advocacy by crafting a memorandum in support of a motion to dismiss for a claim of negligence against two county agencies.

Additionally, my experiences at Washington and Lee have equipped me with skills necessary to effectively analyze litigation issues. After excelling in litigation competitions during my second year of law school, I was selected for the Advanced Administrative Law Clinic, where I will assist coal miners seeking federal black lung benefits. I expect to engage in all phases of litigation, such as taking depositions, cross-examining experts, representing clients before an administrative law judge, and perhaps presenting argument for the Court of Appeals for the Fourth Circuit. These experiences will improve my ability to research and analyze complex issues and efficiently convey my findings as a law clerk.

I arrived at law school with a strong background in research and writing, forged through my experience as an intern at a small law firm as an undergraduate. As an intern for Shoaf and Wencker, I performed legal research and drafted motions, including motions to suppress evidence, motions to proceed in *forma pauperis*, and motions for bail modification. These projects provided me with an early introduction to the legal field, and a foundation on which to build my legal education.

Thank you for considering me for this position.

Sincerely,

Charles T. Jones III

Enclosures

Charles T. Jones III

16 Houston Street Lexington, VA 24450 | (717) 639-9054 | jones.c22@law.wlu.edu

EDUCATION

Washington and Lee University School of Law, Lexington, VA – *J.D.*, expected 2022
GPA: 3.577

Journal: *Washington and Lee Law Review*, Staffwriter (Note Topic: Circuit Split on Fourth Amendment Search Issue)

Advocacy Competitions: *John W. Davis Moot Court Competition*, Semifinalist; *ABA Association Appellate Advocacy D.C. Regional Competition*, Oral Advocate (earned sixth place as an individual oral advocate out of seventy-two competitors, argued in the semi-final round); *Washington and Lee Mediation Competition*, Runner-Up

Clinic: *Advanced Administrative Litigation Clinic* (will assist coal miners seeking federal black lung benefits during the 2021–2022 academic year)

Juniata College, Huntingdon, PA

B.A., *magna cum laude*, Politics and Psychology, May 2019

Honors: Juniata College Honor Society; Politics Honor Society; Psychology Honor Society

Athletics: Varsity Men's Soccer, *Captain*; Student Athlete Advisory Committee, Representative

Leadership and Involvement: Mock Trial; Class Vice President; Freshmen Orientation Leader; Residential Assistant; Campus Tour Guide; Peer Tutor

Study Abroad: University of Newcastle, Australia (Spring 2018); Vietnam (Winter 2017 – 2018)

EXPERIENCE

McNees Wallace & Nurick LLC

Summer Law Clerk, June 2021 – August 2021

Litigation and real estate practice groups

Prince William County Attorney's Office

Summer Law Clerk, June 2020 – August 2020

Conducted legal research and wrote legal memoranda on numerous topics, including First Amendment law, labor and employment, negligence, county immunity from tort claims, and statutory analysis; drafted a memorandum in support of a demurrer

Shoaf and Wencker Law Firm, Huntingdon, PA

Intern, August 2018 – August 2019

Drafted motions to suppress evidence, motions for bail modification, and motions to proceed *in forma pauperis*; researched case law on DUI blood test consent issues; coordinated client meetings; observed numerous court proceedings, including jury trials and bench trials

Juniata College, Huntingdon, PA

Research Assistant – Department of Psychology, August 2016 – December 2017

Performed political psychology research, presented research on threat perception and authoritarianism at Liberal Arts Symposium

COMMUNITY INVOLVEMENT

American Heart Association Fundraiser – raised \$7,000 in one month

Special Olympics Volunteer

INTERESTS

Scuba Diving – Certified Open Water Diver. Completed several dives in Australia

Traveling – visited 10 countries and hope to visit Ireland next

English Premier League Soccer – Chelsea F.C. fan

**WASHINGTON AND LEE
UNIVERSITY**

OFFICE OF THE UNIVERSITY REGISTRAR

Lexington, Virginia 24450-2116

540.458.8455

SSN: ***-**-1790

Student ID: 1742059

Birthdate: 09/05/****

Student's Name: Mr. Charles T. Jones

Jones III, Charles T.

Entered: 08/12/2019 as LAW:FIRST-YEAR STU

Current Program: Law

Class: 2022

Current Status: On Campus

Major:

Other Ed: BA JUNIATA COLLEGE Huntingdon PA 16652

Date Produced: 06/11/2021

COURSE	ATT	COM	GRADE	POINTS	COURSE	ATT	COM	GRADE	POINTS
LAW-FALL SEMESTER 2019-20					LAW 428P TRIAL ADVOCACY PRACTICUM	3.0	3.0	A-	11.01
LAW 109 CIVIL PROCEDURE	4.0	4.0	A-	14.68	LAW 511 LAW REVIEW	2.0	2.0	CR	0.00
LAW 140 CONTRACTS	4.0	4.0	A	16.00	LAW 516 INTER-SCHOOL APPELLATE ADV COM	1.0	1.0	CR	0.00
LAW 163 LEGAL RESEARCH	0.5	0.5	B+	1.67	Term Cmpl Cr: 15.0	GPA Pts: 41.67	GPA Cr: 12.0	GPA: 3.473	
LAW 165 LEGAL WRITING I	2.0	2.0	A-	7.34	Year Cmpl Cr: 29.0	GPA Pts: 84.69	GPA Cr: 24.0	GPA: 3.529	
LAW 190 TORTS	4.0	4.0	B+	13.32	Cumul Cmpl Cr: 61.0	GPA Pts: 137.70	GPA Cr: 38.5	GPA: 3.577	
Term Cmpl Cr: 14.5	GPA Pts: 53.01	GPA Cr: 14.5	GPA: 3.656		***** END OF TRANSCRIPT *****				
Cumul Cmpl Cr: 14.5	GPA Pts: 53.01	GPA Cr: 14.5	GPA: 3.656						

The COVID-19 pandemic required significant academic changes. Unusual enrollment patterns and grading reflect the disruption of the time, not necessarily the student's work.

LAW-SPRING SEMESTER 2019-20					LAW-FALL SEMESTER 2021-22	CURRENT OR FUTURE REGISTRATION			
LAW 130 CONSTITUTIONAL LAW	4.0	4.0	CR	0.00	LAW 289 FAMILY LAW	3.0			
LAW 150 CRIMINAL LAW	3.0	3.0	CR	0.00	LAW 336 INTRO TO LATIN AMERICAN LAW	1.0			
LAW 163 LEGAL RESEARCH	0.5	0.5	CR	0.00	LAW 407 SKILLS IMMERSION - LITIGATION	2.0			
LAW 166 LEGAL WRITING II	2.0	2.0	CR	0.00	LAW 417P STATUTORY INTERPRETATION PRAC	4.0			
LAW 179 PROPERTY	4.0	4.0	CR	0.00	LAW 531 ADV ADMIN LIT CLIN (BLACK LUNG)	5.0			
LAW 195 TRANSNATIONAL LAW	3.0	3.0	CR	0.00					
Term Cmpl Cr: 16.5	GPA Pts: 0.00	GPA Cr: 0.0	GPA: 0.000						
Year Cmpl Cr: 31.0	GPA Pts: 53.01	GPA Cr: 14.5	GPA: 3.656						
Cumul Cmpl Cr: 31.0	GPA Pts: 53.01	GPA Cr: 14.5	GPA: 3.656						

LAW-SUMMER 2020-21	SUMMER SCHOOL								
LAW 888 SUMMER INTERNSHIP			1.0	CR					
Term Cmpl Cr: 1.0	GPA Pts: 0.00	GPA Cr: 0.0	GPA: 0.000						
Cumul Cmpl Cr: 32.0	GPA Pts: 53.01	GPA Cr: 14.5	GPA: 3.656						

LAW-FALL SEMESTER 2020-21									
LAW 201 ADMINISTRATIVE LAW	3.0	3.0	A-	11.01					
LAW 270 EMPLOYMENT PRACTICES	3.0	3.0	A-	11.01					
LAW 285 EVIDENCE	3.0	3.0	A-	11.01					
LAW 293 FED INCOME TAX OF INDIVIDUALS	3.0	3.0	B+	9.99					
LAW 511 LAW REVIEW	2.0	2.0	CR	0.00					
Term Cmpl Cr: 14.0	GPA Pts: 43.02	GPA Cr: 12.0	GPA: 3.585						
Cumul Cmpl Cr: 46.0	GPA Pts: 96.03	GPA Cr: 26.5	GPA: 3.624						

LAW-SPRING SEMESTER 2020-21									
LAW 265 CRIMINAL PROCEDURE-ADJUDICATIO	3.0	3.0	B	9.00					
LAW 267 ELECTRONIC DISCOVERY	1.0	1.0	A-	3.67					
LAW 385P NEGOTIATION/CONFLICT RES PRAC	2.0	2.0	A	8.00					
LAW 390 PROFESSIONAL RESPONSIBILITY	3.0	3.0	B+	9.99					

(continued in next column)

James D. King
Registrar

PAGE 1 of 1

Charles T. Jones, III
Degree: Bachelor of Arts

Date Printed: 06/12/19

1112640
Graduated: 05/19

POE: Psychology and Politics

DEPT	CAT#	TITLE	CR	GR	DEPT	CAT#	TITLE	CR	GR
FALL TERM 15					FALL TERM 17				
IT100		Information Access	1.00	A	EB105		Int. Economic Issues	3.00	A
PS101		Intro to Amer. Government	4.00	A-	PY303		Learning & Conditioning	3.00	A-
PY101		Intro. to Psychology	3.00	B+	PY309		Research Meth. in Psych.	4.00	A
ND102		Intro Library Research	1.00	A	PS320		TPJ: Surveillance & Const.	3.00	A
EN110		College Writing Seminar	4.00	B+	PY340		Research in Psychology	2.00	A
SPRING TERM 16					*** Dean's List ***				
MA100		Precalculus	3.00	A-	SPRING TERM 18				
SO101		Intro to Sociology	3.00	A	SO2XXTR		Intro to Aboriginal Studie	4.00	A
PS216		State & Local Government	3.00	A-	HS2XXTR		The Australian Experience	4.00	B
PS222		Western Pol. Thought	4.00	B+	PY4XXTR		Adv Health Psych	4.00	A
PY304		Cognitive Psychology	3.00	A	EXCWAIVER		Waiver for Studying Abroad	0.00	
*** Dean's List ***					Transfer Credit:				
SUMMER TERM 16					Univ Of Newcastle Australia				
PS206		The Culture War	3.00	B+	12.00				
FALL TERM 16					FALL TERM 18				
PS102		Intro to Intl. Politics	4.00	A	CM133		Mass Media and Society	3.00	A
MU111G		Guitar Studio	1.00	A	ND199		ST: Mock Trial	3.00	A
TH180		Theatre Arts Practicum	3.00	A	PY270		Cognitive Neuroscience	3.00	A
IC299		St: Vietnam: Imp, Comm, Glob	2.00	B	PS311		Const Interp: Pwers of Gov	4.00	B+
PY340		Research in Psychology	2.00	A	PS490		LaW Office Intern	2.00	A
PY350		Developmental Psychology	3.00	A	PS495		Politics Res/Seminar	2.00	A
*** Dean's List ***					*** Dean's List ***				
SPRING TERM 17					SPRING TERM 19				
TH181		Theatre Arts Practicum	3.00	A	ND199		ST: Mock Trial	1.00	A
PS199		ST: Lobbying	1.00	A-	PS199		ST: Political Fictions	3.00	A-
PY203		Abnormal Psychology	3.00	A	EB399		ST: Alt Dispute Resolutn	3.00	A
ND.SS214		Stats. for Social Science	4.00	B	PS399		ST: The Law & Psychology	3.00	A
IC299		ST: Vietnam: Imp, Comm, Glob I	1.00	A	PY415		Capstone in Psych	3.00	A
PS334		Human Rights	3.00	B+	*** Dean's List ***				
PY341		Research in Psychology	2.00	A	-----				
*** Dean's List ***					Degree Received: Bachelor of Arts				
					Honors.....: MAGNA CUM LAUDE				

***** END OF TRANSCRIPT *****									

Continued on next Column/Page

SEM	ATT	COMPL	GPA	ATT	COMPL	GPA
15/FA	13.00	13.00	3.538	13.00	13.00	3.538
16/SP	16.00	16.00	3.709	29.00	29.00	3.632
16/SU	3.00	3.00	3.330	32.00	32.00	3.604
16/FA	15.00	15.00	3.867	47.00	47.00	3.688
17/SP	17.00	17.00	3.627	64.00	64.00	3.672
17/FA	15.00	15.00	3.934	79.00	79.00	3.721
18/SP	12.00	12.00	3.667	91.00	91.00	3.714
18/FA	17.00	17.00	3.842	108.00	108.00	3.734
19/SP	13.00	13.00	3.924	121.00	121.00	3.755

JUNIATA
COLLEGE

OFFICIAL COLLEGE RECORD

Lucille M. Condon

REGISTRAR

STUDENT IN GOOD STANDING UNLESS OTHERWISE INDICATED

TRANSCRIPT KEY PRINTED ON BACK OF OFFICIAL TRANSCRIPT

WASHINGTON AND LEE UNIVERSITY
SCHOOL OF LAW
LEXINGTON, VA 24450

June 14, 2021

The Honorable Elizabeth Hanes
Spottswood W. Robinson III & Robert R. Merhige,
Jr., U.S. Courthouse
701 East Broad Street, 5th Floor
Richmond, VA 23219

Dear Judge Hanes:

I am delighted to write a letter of recommendation on behalf of Charlie Jones. I taught Charlie legal writing during the 2019-2020 school year at Washington and Lee School of Law. Legal writing is a small class of about 20 students. It requires students to actively engage: every class, students must write individually or in groups and analyze and discuss various components of legal analysis. As a result, I got to know Charlie well over the course of the year. Charlie stood out early on as a very skilled legal writer and thinker. He is also extremely personable. As a result, I think he would make a wonderful addition to chambers, both for his legal writing acumen and his friendly disposition.

Charlie did very well in my class. In the fall semester he received an A-, a grade reserved only for the very top of the class. There are two main assignments in the fall, both objective memoranda. On both assignments he received the highest grade in the class. Especially on his open memo, the culmination of the fall semester course, Charlie excelled. His memo was clear, well-reasoned and thorough. It was by far the best submission I received. In the spring, the course transitions to persuasive writing. Charlie continued to write exceptionally well. For both the trial court memorandum and appellate brief, Charlie was able to find the relevant cases, persuasively analyze them, and draft clear and precise prose. The appellate court brief was due during the midst of the pandemic, in March, after all in-person classes had been canceled. The school adopted a no-grade policy for the spring because of the upheaval. Notwithstanding these difficult circumstances, Charlie submitted an outstanding appellate brief. He would have received one of the highest grades for the semester if I had been authorized to give them out.

Charlie is very skilled at legal research and writing, but he is also extremely likable. It is no surprise to me that he was a tour guide and residential assistant at his undergraduate institution. Whenever he came to office hours, Charlie was friendly, easy to talk to, and had pertinent questions to discuss. I think Charlie would be an extremely capable clerk. I highly recommend him.

Sincerely,

Allison Weiss
Professor of Practice and
Legal Writing Instructor

Allison Weiss - aweiss@wlu.edu

WASHINGTON AND LEE UNIVERSITY
SCHOOL OF LAW
LEXINGTON, VA 24450

June 14, 2021

The Honorable Elizabeth Hanes
Spottswood W. Robinson III & Robert R. Merhige,
Jr., U.S. Courthouse
701 East Broad Street, 5th Floor
Richmond, VA 23219

Dear Judge Hanes:

It is a pleasure to write this letter in support of Charles Jones' application to be a clerk in your office. I am a clinical professor of law at Washington and Lee University School of Law, and the director of the Washington and Lee Black Lung Clinic. The clinic represents disabled coal miners or their survivors who are seeking federal black lung benefits. The coal companies we routinely oppose are represented by respected law firms that vigorously defend their clients. I also teach Criminal Law and Criminal Procedure. Prior to coming to Washington and Lee, I was an officer in the United States Army for 21 years, serving primarily in the Judge Advocate General's Corps. I have had the good fortune of being the note advisor for Mr. Jones' law review article regarding the Fourth Amendment. I have also accepted Mr. Jones into the Black Lung Legal Clinic next semester.

In the fall of 2020 Mr. Jones came to my office and asked my opinion regarding a possible law review note topic. The topic dealt with a circuit split regarding how to apply the Supreme Court opinion in *Peyton v. New York*. At first I thought the subject was a little thin, however after discussing the split and Charlie's perspective on the potential impact of the split, I realized the topic deserved attention. As Mr. Jones' note advisor I met with Charlie regularly to discuss the progress of his article. I was extremely impressed with Charlie's research, organization, and writing ability. Charlie's writing is clean, clear, and conversational. When I gave Mr. Jones suggestions to investigate, he did so thoroughly and was able to build off of my suggestions independently. Additionally, Charlie is a pleasure to work with. He listens well, takes criticism constructively, and collaborates effectively. Finally, Mr. Jones applied to be in the Black Lung Clinic for next year. The process for being selected as a student caseworker in the Clinic is competitive. This past year only half of the students who applied to the Clinic were selected. Mr. Jones was selected to be a student caseworker in the Clinic based on the strength of his interest statement and application.

Mr. Jones is intelligent, mature, driven, and a pleasure to work with. He will be an outstanding addition to your office if you choose to accept his application.

Very truly yours,

Timothy C. MacDonnell
Professor of Law and
Director Black Lung Clinic

Timothy MacDonnell - macdonnell@wlu.edu - 540-458-8224

WRITING SAMPLE

This writing sample is a portion of an appellate brief that argues that a university is liable under Title VI of the Civil Rights Act of 1964 for harassment that one of its students endured from other university students. The events that are analyzed are from a fictitious scenario that was given as a class assignment. This version of the brief only contains the second part of the argument section, which argues that liability for the harassment can be imputed to the University. The first part of the argument section, which argues that the harassment is covered by Title VI, is omitted for length purposes. The table of contents, table of authorities, issue presented, statement of the case, summary of the argument, and conclusion are also omitted.

Charles T. Jones III

D. There is a Strong Basis for Imputing Liability for the Harassment to the University of Norfolk.

A university can be held liable for student-on-student harassment under Title VI if the following three criteria are met: 1) the university had knowledge of the harassment; 2) the university had control over the harassers and the context in which the harassment took place; and 3) the university was deliberately indifferent to the harassment. *Davis ex rel. Lashonda D. v. Monroe Cnty. Bd. of Educ.*, 526 U.S. 629, 644 (1999). The Court has held that a university's response to harassment is deliberately indifferent if it is unreasonable given the circumstances. *Id.* at 630. Cases on university liability for student-on-student harassment under Title VI are limited, so the Court has often relied on Title IX cases when hearing cases about university liability under Title VI. *Gebster v. Lago Vista Indep. School Dist.*, 524 U.S. 274, 286 (1998).

1. The University of Norfolk Had Actual Knowledge of the Harassment.

The University of Norfolk had actual knowledge of the harassment that Li endured. In order for a university to have actual knowledge of student-on-student harassment, a school official with authority to address the harassment and to institute corrective measures must have had actual knowledge of the harassment. *Gebster, Gebster v. Lago Vista Indep. School Dist.*, 524 U.S. 274, 290 (1998). In *Gebster*, the plaintiff brought a Title IX claim against a school district, claiming that he had been sexually harassed by a teacher. *Id.* at 274. Before bringing the suit, the plaintiff's parents had informed the high school principal that the teacher in question had made inappropriate comments to the plaintiff. *Id.* Although the school official had the authority to address harassment and institute corrective measures, the complaint made by the plaintiff's parents did not include any

specific allegations of sexual harassment, so the Court held that the school did not have actual knowledge. *Id.* at 291. However, in *Jennings v. Univ. of N.C.*, 482 F.3d 686, 700 (4th Cir. 2007), the plaintiff reported sexual harassment to the lawyer who was council to the University and an official responsible for fielding sexual harassment complaints. The plaintiff's report included vivid details about sexual comments and inquiries made by her coach and about how the situation was humiliating and discomforting. *Id.* The attorney was dismissive of the plaintiff's concerns and failed to take any action to investigate, report, or remedy the harassment. *Id.* The Court held that this report was sufficient to give the University actual knowledge of the harassment. *Id.*

In this case, there is even more evidence that the University of Norfolk had actual knowledge of the harassment than in *Jennings*. The University of Norfolk had actual knowledge of the harassment through two school officials: John Willow, who is the Associate Director for Professional Responsibility, and Marcus Jenner, who is the Dean of the law school. R. at 5–6. Li reported the harassment to Willow in early December of 2018 after he found the note on his car that read “You should watch your back. Pray for the end of totalitarian governments. Down with China, you bastard.” R. at 5. Li told Willow about the note and about all of the other harassment that he had endured up to that point in time. R. at 5. The University of Norfolk requires Willow and employees in similar positions to report instances of clear and pervasive harassment. R. at 24. Despite this requirement, just like the school official in *Jennings*, Willow failed to report the harassment and was dismissive of Li's claims, telling him that it is often hard to socialize in law school. R. at 5. Therefore, the University of Norfolk had actual knowledge of the harassment through Willow.

Li reported the harassment to Dean Jenner in late January of 2018 immediately after his car was vandalized. R. at 6. Dean Jenner is a very high ranking school official whose duties include solving a wide variety of problems. R. at 37. Unlike the plaintiff in *Gebster*, Li told Dean Jenner about all of the harassment that he had endured. R. at 25. Therefore, the University of Norfolk had actual knowledge of the harassment through Dean Jenner as well as through Mr. Willow.

2. The University of Norfolk Exercised Substantial Control over the Harassers and the Context in Which the Harassment Occurred.

The University of Norfolk exercised substantial control over the harassers. A university exercises substantial control over harassers if the harassers are under the university's disciplinary authority. *Davis ex rel. Lashonda D. v. Monroe Cnty. Bd. of Educ.*, 526 U.S. 629, 647 (1999). In *Davis*, the plaintiff brought a Title IX claim against a school board based on harassment from other students. *Id.* The Court held that since the students were under the disciplinary authority of the school board, the board exercised substantial control over the student harassers. *Id.*

In this case, in direct parallel with *Davis*, Li was harassed by students of the University of Norfolk. R. at 44. The students are under the disciplinary authority of the University. Accordingly, the University exercised substantial control over the harassers.

The University of Norfolk also exercised substantial control over the context in which the harassment took place. Universities have control over the context in which harassment occurs if it takes place on campus grounds. *Feminist Majority Found. v. Hurley*, 911 F.3d 674, 687 (4th Cir. 2019). In addition, universities can exercise control over online anonymous harassment if the circumstances are correct. *Id.* In *Feminist*

Majority Found., the majority of the harassment suffered by the plaintiffs took place on Yik Yak, a social media app where users can post things anonymously. *Id.* Although the harassment took place via an anonymous online platform, the evidence showed that the posts were made while the students were on campus, many of the posts were made using the campus' wireless network, and the posts targeted other University students. *Id.* For those reasons, the Court held that the University exercised substantial control over the context in which the harassment took place. *Id.* In coming to this holding, the Court emphasized the fact that universities can control activities and communication that take place on their own networks. *Id.* at 688.

In this case, just like the harassment in *Feminist Majority Found.*, a large amount of the harassment took place on the University of Norfolk's campus. The vandalism to Li's car, the note left on Li's car, and the comments that Li received from students all took place on campus grounds. R. at 5–6. Also, the harassing emails that Li received are closely analogous to the harassing comments made via Yik Yak in *Feminist Majority Found.* Although the emails were sent from anonymous accounts, they were sent to Li's email account, which the University had control over, and they were specifically targeting a student of the University. R. at 5. Therefore, the University of Norfolk exercised substantial control over both the context in which the harassment took place and the harassers themselves.

3. The University of Norfolk was Deliberately Indifferent to the Harassment.

The University of Norfolk was deliberately indifferent to the harassment that Li suffered at the hands of their students. There is no exact formula for deliberate indifference, but the Court has held that universities are deliberately indifferent if their response to student-on-student

harassment is clearly unreasonable given the circumstances. *Davis ex rel. Lashonda D. v. Monroe Cnty. Bd. of Educ.*, 526 U.S. 629, 630 (1999). Complete inaction on behalf of a university is not necessary for a finding of deliberate indifference. *Feminist Majority Found. v. Hurley*, 911 F.3d 674, 689 (4th Cir. 2019). In *Feminist Majority Found.*, the plaintiffs were sexually harassed by other students via Yik Yak, a social media app where posts are anonymous. *Id.* at 687. The University only responded to the harassment by listening to the student's complaints, sending a generic email, and by having a campus police officer accompany one of the threatened students on one occasion. *Id.* at 689. Although the University took some action, the Court held that the University was deliberately indifferent because their response to the harassment was unreasonable. *Id.* In coming to this holding, the Court stated that the school could have taken numerous other actions to remedy the harassment, including holding mandatory assemblies to discourage the harassment, providing anti-sexual discrimination training to the students and faculty, and making a more concrete statement that the school would not tolerate sexual harassment. *Id.* at 688.

This Court has held that universities who thoroughly address student-on-student harassment and investigate all incidents of harassment are not deliberately indifferent. *S.B. ex rel. A.L. v. Bd. of Educ. of Harford Cty.*, 819 F.3d 69, 77 (4th Cir. 2016). In *S.B. ex rel. A.L.*, the plaintiff brought a claim against his school, alleging that he was harassed by other students because of his disability. *Id.* at 69. In response to the student's original report, the school investigated every incident of alleged harassment, disciplined all known offenders, and took measures to ensure that the plaintiff was safe while at school. *Id.* at 77. The Court held the school was not deliberately indifferent because their

response was reasonable given the circumstances. *Id.* at 76. The Court reached a similar conclusion in *Baynard v. Malone*, 268 F.3d 228, 288 (4th Cir. 2001), where the plaintiff brought a Title IX claim after he was sexually abused by his teacher. Immediately upon learning about this abuse, a school official began an investigation, during which he interviewed everyone who claimed to have knowledge of the incident. *Id.* at 236. The Court held that this response was reasonable and therefore the school was not deliberately indifferent to the abuse. *Id.*

In this case, the University of Norfolk's response to the harassment was not at all reasonable given the circumstances. In stark contrast to *Baynard*, the University of Norfolk was slow to react at all to the harassment. R. at 5. The University had actual knowledge of the harassment through Mr. Willow in early December, yet they only started an investigation after the incident where Li's car was vandalized in late January, meaning they took over a month to respond to the harassment. R. at 5–6. Also, unlike *S.B. ex rel. A.L.*, the University of Norfolk did not investigate all of the incidents of harassment. R. at 6. They only investigated one incident: the vandalism of Li's car. Other than the investigation, the only action taken on behalf of the University was a tweet from Dean Jenner about the vandalism incident. R. at 6. This action is analogous to the generic email that was sent out in *Feminist Majority Found.* and it is an insufficient in light of the circumstances. Even though the majority of the harassment was anonymous, the University could have taken action in some of the ways that the Court discussed in *Feminist Majority Found.*, such as having a mandatory assembly to address the issue or making a more concrete and official statement that such harassment would not be tolerated. However, the University failed to take action in any of these forms.

Accordingly, the University of Norfolk's response was clearly unreasonable given the circumstances, meaning that the University was deliberately indifferent to the harassment.

Applicant Details

First Name **Megan**
 Middle Initial **L**
 Last Name **Jones**
 Citizenship Status **U. S. Citizen**
 Email Address mlj3ke@virginia.edu

Address
Address
Street
2102 Arlington Blvd. #5
City
Charlottesville
State/Territory
Virginia
Zip
22903
Country
United States

Contact Phone Number **8052068680**

Applicant Education

BA/BS From **University of California-Los Angeles**
 Date of BA/BS **June 2019**
 JD/LLB From **University of Virginia School of Law**
<http://www.law.virginia.edu>
 Date of JD/LLB **May 22, 2022**
 Class Rank **School does not rank**
 Law Review/Journal **Yes**
 Journal(s) **Virginia Journal of Social Policy and the Law**
 Moot Court Experience **Yes**
 Moot Court Name(s) **BMI Entertainment & Media Law Moot Court Competition**
Philip C. Jessup International Law Moot Court Competition

Bar Admission

Prior Judicial Experience

Judicial Internships/
Externships **No**
Post-graduate Judicial
Law Clerk **No**

Specialized Work Experience

Recommenders

Harmon, Rachel
rharmon@law.virginia.edu
(434) 924-7205
Block, Andrew
ablock@law.virginia.edu
(434) 243-4320
Geis, George
geis@law.virginia.edu
(434) 243-2341

References

Professor Andrew Block:
(434) 243-4320
ablock@law.virginia.edu

Professor George Geis:
(434) 243-2341
geis@virginia.edu

Professor Rachel Harmon:
(434) 924-7205
rharmon@virginia.edu

**This applicant has certified that all data entered in this profile and
any application documents are true and correct.**

Megan L. Jones

2102 Arlington Blvd. #5, Charlottesville, VA 22903 • (805) 206-8680 • mlj3ke@virginia.edu

June 14, 2021

The Honorable Elizabeth W. Hanes
U.S. District Court, Eastern District of Virginia
Spottswood W. Robinson III & Robert R. Merhige Jr., U.S. Courthouse
701 East Broad Street, Suite 5318
Richmond, VA 23219

Dear Judge Hanes:

I am a rising third-year law student at the University of Virginia School of Law, and I am writing to apply for a clerkship in your chambers following my graduation in May 2022.

I am enclosing my resume, my law school transcript, and a writing sample. You will also be receiving letters of recommendation from Professors Harmon, Geis, and Block. Each professor has expressed a willingness to speak with you directly. For your convenience, Professor Harmon's telephone number is (434) 924-7205, Professor Geis' telephone number is (434) 243-2341, and Professor Block's telephone number is (434) 243-4320.

Please let me know if there is any other information you need from me. Thank you for your consideration.

Sincerely,

Megan Jones

Megan L. Jones

2102 Arlington Blvd., #5, Charlottesville, VA 22903 • (805) 206-8680 • mlj3ke@virginia.edu

EDUCATION

University of Virginia School of Law, Charlottesville, VA

J.D., Expected May 2022

- GPA: 3.495
- Karsh-Dillard Scholar (full-tuition merit scholarship)
- Program in Law and Public Service, Co-President
- *Virginia Journal of Social Policy & the Law*, Senior Managing Board Member
- Jessup International Law Moot Court Competition, Top-Five Oralist at U.S. Regional Competition
- Extramural Moot Court, Competitor
- Mock Trial, Best Advocate at All Star National Challenge

University of California, Los Angeles, Los Angeles, CA

B.A., Political Science, *magna cum laude*, June 2019

- National Merit Scholar
- Center for Middle East Development, Research Chair

EXPERIENCE

U.S. Attorney's Office for the Western District of Virginia, Charlottesville, VA

Intern, May 2021 – July 2021

U.S. Attorney's Office for the Southern District of New York, Criminal Division, New York, NY

Intern, June 2020 – August 2020

- Conducted research and prepared legal memoranda for pending public corruption prosecutions
- Performed investigative work, created evidentiary timelines, and completed privilege reviews
- Shadowed attorneys during resentencing hearings, oral arguments, and proffer sessions

Professor Rachel Harmon, University of Virginia School of Law, Charlottesville, VA

Research Assistant, May 2020 – August 2020

- Performed research and created informational graphics for upcoming edition of "Law of the Police," including on the topics of police brutality, confidential informants, and the rights of the detained

Fredman Lieberman Pearl LLP, Los Angeles, CA

Trial Assistant, May 2020 – June 2020

- Crafted trial strategy based on thorough review of deposition transcripts, motions, and evidence
- Prepared direct examination questions in consultation with client and supervising attorney

Legal Assistant, May 2018 – July 2019

- Drafted and edited pleadings, propounded and responded to discovery, and performed legal research
- Prepared for and attended appellate arguments, depositions, hearings, and client meetings
- Interviewed and screened potential clients while maintaining contact with current clients

Office of the Ventura County Public Defender, Ventura, CA

Pro Bono Volunteer, January 2020

- Drafted motions, performed research, prepared legal memoranda, and summarized evidence
- Participated in plea negotiations, client meetings, and daily court proceedings

Conference: Enriching the Middle East's Economic Future, Doha, Qatar

Special Assistant, October 2018 – November 2018

- Traveled to Doha, Qatar to assist with conference addressing the economy of the Middle East
- Generated spoken content, arranged and attended meetings, and coordinated logistics

INTERESTS

Reading fantasy novels, listening to history podcasts, and improvising on the piano

UNIVERSITY OF VIRGINIA
SCHOOL OF LAW

Name: Megan Jones

Date: June 09, 2021

Record ID: mlj3ke

This is a report of law and selected non-law course work (including credits earned). This is not an official transcript.

Due to the global COVID-19 pandemic, the Law faculty imposed mandatory Credit/No Credit grading for all graded classes completed after March 18 in the spring 2020 term.

FALL 2019

LAW	6000	Civil Procedure	4	B+	Rutherglen, George
LAW	6002	Contracts	4	A	Geis, George Samuel
LAW	6003	Criminal Law	3	B+	Bowers, Josh
LAW	6004	Legal Research and Writing I	1	S	Buck, Donna Ruth
LAW	6007	Torts	4	B+	Barzun, Charles Lowell

SPRING 2020

LAW	6001	Constitutional Law	4	CR	Matthew, Dayna Bowen
LAW	6104	Evidence	4	CR	Ferzan, Kimberly
LAW	7088	Law and Public Service	3	CR	Shin, Crystal Sue
LAW	6005	Lgl Research & Writing II (YR)	2	S	Buck, Donna Ruth
LAW	6006	Property	4	CR	Johnson, Alex M

FALL 2020

LAW	7009	Criminal Procedure Survey	4	A-	Harmon, Rachel A
LAW	9182	International Law/Use of Force	3	B+	Deeks, Ashley
LAW	7067	National Security Law	3	B+	Deeks, Ashley
LAW	7071	Professional Responsibility	3	A-	Mitchell, Paul Gregory

SPRING 2021

LAW	6102	Administrative Law	4	B+	Bamzai, Aditya
LAW	9008	Children and the Law	3	A-	Block Jr., Andrew K.
LAW	8004	Con Law II: Speech and Press	3	A-	Kendrick, Leslie Carolyn
LAW	7194	Int'l Criminal Law	3	B+	Luban, David

Student Copy / Personal Use Only | [304611420] [JONES, MEGAN]

University of California, Los Angeles
UNDERGRADUATE Student Copy Transcript Report
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Student Information

Name: JONES, MEGAN LEE
UCLA ID: 304611420
Date of Birth: 01/31/XXXX
Version: 08/2014 | SAITONE
Generation Date: December 01, 2020 | 06:20:38 AM
This output is generated only once per hour. Any data changes from this time will be reflected in 1 hour.

Program of Study

Admit Date: 09/21/2015
COLLEGE OF LETTERS AND SCIENCE
Major:
POLITICAL SCIENCE

Degrees | Certificates Awarded

BACHELOR OF ARTS Awarded March 22, 2019
in POLITICAL SCIENCE
Magna Cum Laude

Secondary School

SANTA SUSANA HIGH SCHOOL, June 2015

University Requirements

Entry Level Writing satisfied
American History & Institutions satisfied

California Residence Status

Resident

Transfer Credit

<u>Institution</u>	<u>Psd</u>
ADVANCED PLACEMENT	1 Term to 10/2015 44.0

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Fall Quarter 2015

Major:
PREPOLITICAL SCIENCE

FIAT LUX FRSHMN SEM Honors Content	COM LIT 19	1.0	0.0	P
SHAKESPEARE	ENGL 90	5.0	20.0	A
WRLD HIST TO AD 600	HIST 20	5.0	20.0	A
EARLY MODERN ITALY	ITALIAN 42A	5.0	20.0	A

Dean's Honors List

	<u>Atm</u>	<u>Psd</u>	<u>Pts</u>	<u>GPA</u>
Term Total	16.0	16.0	60.0	4.000

Winter Quarter 2016

JAZZ-AMERCN CULTURE	ETHNOMU 50B	5.0	18.5	A-
INTRO-LATIN AMERICA	I A STD 50	5.0	0.0	P
INTRO LING ANALYSIS	LING 20	5.0	16.5	B+

	<u>Atm</u>	<u>Psd</u>	<u>Pts</u>	<u>GPA</u>
Term Total	15.0	15.0	35.0	3.500

Spring Quarter 2016

HMN PHYS-DIET&EXRCS	PHYSICI 5	5.0	20.0	A
WORLD POLITICS	POL SCI 20	5.0	20.0	A
POLITICS & STRATEGY	POL SCI 30	5.0	20.0	A

Dean's Honors List

	<u>Atm</u>	<u>Psd</u>	<u>Pts</u>	<u>GPA</u>
Term Total	15.0	15.0	60.0	4.000

Summer Sessions 2016

INTRO-STAT REASON	STATS 10	5.0	15.0	B
	<u>Atm</u>	<u>Psd</u>	<u>Pts</u>	<u>GPA</u>
Term Total	5.0	5.0	15.0	3.000

Fall Quarter 2016

ELEM MODERN CHINESE	CHIN 1	5.0	0.0	P
LIFE-CONCPTS&ISSUES	LIFESCI 15	5.0	20.0	A
INTR-POLITCL THEORY	POL SCI 10	5.0	18.5	A-

	<u>Atm</u>	<u>Psd</u>	<u>Pts</u>	<u>GPA</u>
Term Total	15.0	15.0	38.5	3.850

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Winter Quarter 2017

LIFE IN THE UNIVERS	ASTR 5	4.0	16.0	A
INTRNTL REL-MIDEAST	POL SCI 132A	4.0	16.0	A
GREAT RUSSIAN NOVEL Writing Intensive	RUSSN 25W	5.0	20.0	A+
Dean's Honors List				
		<u>Atm</u>	<u>Psd</u>	<u>Pts</u>
	Term Total	13.0	13.0	52.0
				4.000

Spring Quarter 2017

Major:

POLITICAL SCIENCE

INTRNTL REL-MIDEAST Honors Content	HNRS M157	4.0	16.0	A
SYRIA&MIDEST&BEYOND	POL SCI 169	4.0	14.8	A-
INTRO-AMERICN PLTCS	POL SCI 40	5.0	20.0	A
Dean's Honors List				
		<u>Atm</u>	<u>Psd</u>	<u>Pts</u>
	Term Total	13.0	13.0	50.8
				3.908

Fall Quarter 2017

FOREIGN RELATION-US	POL SCI 120A	4.0	16.0	A
INTL RLTN-S-CHINA	POL SCI 135	4.0	16.0	A+
AMRCN SUBURBANIZATN	POL SCI 143C	4.0	16.0	A
Dean's Honors List				
		<u>Atm</u>	<u>Psd</u>	<u>Pts</u>
	Term Total	12.0	12.0	48.0
				4.000

Winter Quarter 2018

LEGAL COMMUNICATION	COMM 170	4.0	16.0	A
THE PRESIDENCY	POL SCI 140B	4.0	16.0	A+
SPEC STDS-COMP PLTC	POL SCI 169	4.0	16.0	A+
Dean's Honors List				
		<u>Atm</u>	<u>Psd</u>	<u>Pts</u>
	Term Total	12.0	12.0	48.0
				4.000

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Spring Quarter 2018

LAWS OF WAR & PEACE	POL SCI 118	4.0	16.0	A+
FRGN PLCY DCSNMAKNG	POL SCI 191B	4.0	16.0	A
RESRCH HNRS THESIS Honors Content	POL SCI 191H	4.0	16.0	A
Dean's Honors List				
	<u>Atm</u>	<u>Psd</u>	<u>Pts</u>	<u>GPA</u>
	Term Total	12.0	12.0	48.0 4.000

Fall Quarter 2018

1001 NIGHTS	COM LIT M110	4.0	0.0	P
COMUNCTN-CPLS&FMLYS	COMM 116	4.0	16.0	A
ELEMENTARY SPANISH	SPAN 3	4.0	16.0	A
	<u>Atm</u>	<u>Psd</u>	<u>Pts</u>	<u>GPA</u>
	Term Total	12.0	12.0	32.0 4.000

Winter Quarter 2019

INTRO SCREENWRITING	FILM TV 33	4.0	14.8	A-
ANCIENT CITIES-IRAN	IRANIAN 187	4.0	16.0	A
UCLA CHORALE	MUSC C90A	2.0	8.0	A
INTERMEDIATE SPAN	SPAN 4	4.0	0.0	P
	<u>Atm</u>	<u>Psd</u>	<u>Pts</u>	<u>GPA</u>
	Term Total	14.0	14.0	38.8 3.880

UNDERGRADUATE Totals

	<u>Atm</u>	<u>Psd</u>	<u>Pts</u>	<u>GPA</u>
Pass/No Pass Total	19.0	19.0	N/a	N/a
Graded Total	135.0	135.0	N/a	N/a
Cumulative Total	154.0	154.0	526.1	3.897

Total Non-UC Transfer Credit Accepted 44.0
Total Completed Units 198.0

END OF RECORD
NO ENTRIES BELOW THIS LINE

June 14, 2021

The Honorable Elizabeth Hanes
Spottswood W. Robinson III & Robert R. Merhige,
Jr., U.S. Courthouse
701 East Broad Street, 5th Floor
Richmond, VA 23219

Dear Judge Hanes:

I am writing to recommend Megan Jones for a clerkship. Megan is a bright, engaged student, and she will make a good clerk.

I taught Megan last fall in my Criminal Procedure Survey course. The course provides an overview of Fourth, Fifth, Sixth, and Fourteenth Amendment doctrines that regulate criminal investigation and adjudication. Like clerking, the course requires reading cases carefully and applying them to new situations. Also like clerking, the course moves very quickly and through large amounts of legal material. Because of COVID, I taught the course entirely by zoom. Still, Megan did well, earning an A-. As Megan's transcript suggests, her grade in my class was no fluke. She has demonstrated consistent and solid performance throughout law school.

Before I taught her, Megan served as my research assistant last summer. I was finishing a new casebook, *The Law of the Police*, and relied on Megan to do quick legal research as issues came up. Her memos were well-researched and well-written, and I found them consistently useful. She was pleasant and responsive, and professional and mature in all of our dealings. I enjoyed working with her.

Despite COVID, Megan has managed to both excel and contribute to the law school and the community beyond in her extracurricular activities. She has performed impressively, winning awards, in the Jessup International Moot Court Competition, and in mock trial. She has contributed pro bono hours to several local non-profits. As her resume suggests, she is committed to public service, and as you will see if you meet her, she is full of energy and enthusiasm.

I expect Megan will be a good clerk, and I encourage you to consider her. Please let me know if I can be of any further assistance.

Sincerely,

Rachel Harmon
Professor of Law
Director, Center for Criminal Justice
Class of 1957 Research Professor of Law
University of Virginia Law School
rharmon@law.virginia.edu
(434) 924-7205
fax: 434-924-7536

Rachel Harmon - rharmon@law.virginia.edu - (434) 924-7205

Andrew Block
University of Virginia School of Law
580 Massie Road
Charlottesville, VA 22903

June 10, 2021

The Honorable Elizabeth Hanes
Spottswood W. Robinson III & Robert R. Merhige,
Jr., U.S. Courthouse
701 East Broad Street, 5th Floor
Richmond, VA 23219

Dear Judge Hanes:

I write to strongly recommend Megan Jones, a second-year law student at the University of Virginia School of Law, to serve as a law clerk in your chambers. I had the pleasure of teaching Megan this past semester in a small, discussion-based, seminar and was extremely impressed with her research and writing skills, her insightful questions and comments, and her overall enthusiasm and intellectual curiosity.

More specifically, this spring, Megan was a student in my seminar on Children and the Law. The seminar only consisted of ten students, which gave me opportunity to work very closely with Megan over the course of the semester. She was an active class participant who not only spoke regularly, but effectively and productively. She always had thoughtful questions that reflected a thorough understanding of the readings or discussion topics, as well as a desire to dig deeper into the content of the course. In addition to weekly readings and class sessions, students were also expected to write two papers.

Megan elected to turn her second paper into her law school extended writing requirement and authored a twenty-five-page research paper on the history and efficacy of special education law in the United States. As a former child advocate who handled many special education cases, and trained lawyers and judges in this area of the law, I can say with confidence that she did a great job. This area of law is technical and complicated, involving an array of related and overlapping federal and state statutes and regulations, Supreme Court jurisprudence, and sometimes conflicting policy concerns. She was able to successfully synthesize all of this information, along with academic research articles on best practices for this student group, to not only produce a clear and coherent explanation of the current state of the law, but also a set of recommendations for ways in which policies and practices could be improved. Earlier in the semester, Megan also submitted a ten-page essay on the application of contemporary cognitive science to the requirement that teens be eighteen to vote. Both submissions were thoroughly researched, well-written, and thought-provoking, and demonstrated a mastery of the class material as well as the ability to expound upon and elaborate on the overarching themes of the course.

I am also involved in some of the public service activities at the Law School and know that Megan is a leader in this area too. For example, in addition to participating in numerous pro bono projects in her time as a student, Megan is the Co-President of the Program in Law and Public Service, which is the tailored curricular program for public service students on grounds.

This interest in public service also translates into her career goal of becoming a federal prosecutor. Her success in both moot court and mock trial activities suggest she has all the skills and potential to be successful in this position as well.

In short, Megan is extremely smart, talented, energetic and productive - all qualities that, I imagine, will make her an excellent law clerk. I recommend her enthusiastically and with full confidence that she will do an outstanding job. If you have any questions about Megan's candidacy, please do not hesitate to contact me at (434) 243-4320 or ablock@virginia.edu.

Very truly yours,

Andrew Block

Andrew Block - ablock@law.virginia.edu - (434) 243-4320

June 08, 2021

The Honorable Elizabeth Hanes
Spottswood W. Robinson III & Robert R. Merhige,
Jr., U.S. Courthouse
701 East Broad Street, 5th Floor
Richmond, VA 23219

Dear Judge Hanes:

I am writing to recommend Megan Jones for a judicial clerkship with your chambers. Megan is one of the best students that I have encountered during my 18 years as a law professor. She has a rare ability to combine top-tier intellectual firepower with a driving work ethic, remarkable interpersonal skills, and a broad range of interests. I know that Megan will be an extraordinary clerk. I would trust her with the most important and difficult research projects, and I hope that you will be able to give her application very serious consideration.

Megan enrolled in my contract law class at the University of Virginia during the fall of 2019. It was a large class (approximately 75 students), but I was soon impressed by Megan. She engaged often (though not excessively) in course discussion—frequently cutting right to the heart of matters. She also displayed considerable intellectual curiosity, enthusiasm, and creativity. I knew that she would have input on the most difficult issues and was not at all surprised when she earned the very highest marks in the class. (I asked to use her answer as a model response for my students in future classes.) Clearly, she was able to replicate this performance in her other classes, and Megan is shaping up as an outstanding student here at Virginia.

Beyond grades, however, Megan has been able to distinguish herself by thriving in a wide range of extracurricular activities at the law school. She is extremely well-rounded: the co-president of our Program in Law and Public Service (an extremely active and visible part of the law school), a leader and award-winner in both the Jessup Moot Court and the Mock Trial competition, the vice-president of our Domestic Violence Project, and an active participant in many other activities. As mentioned above, she has already won two oral advocacy prizes, and I would not be surprised to see her take home the Moot Court trophy next year. Megan is sharp, personable, and convincing—and she is clearly very driven. Indeed, I have a difficult time understanding how Megan finds the time to accomplish all that she does (she is also active with numerous outside legal organizations and has worked as a research assistant for Professor Harmon here at the law school). In my experience, this level of engagement is extremely rare, and it suggests that Megan will be a dedicated judicial clerk.

Finally, as I have gotten to know Megan very well outside of class, I feel comfortable adding that she has a mature, balanced, and very pleasant personality. She possesses a keen combination of judgment and modesty, and she has a great sense of humor. No one will have trouble working side-by-side with Megan.

In short, I believe that Megan Jones is an exceptional candidate for a judicial clerkship—on all three dimensions of intellectual ability, work ethic, and interpersonal skills. I am certain that she will make an outstanding and memorable colleague, and I know that you would not regret hiring her for the year. I would be eager to discuss Megan's qualifications in more detail and can be reached at (434) 243-2341 or geis@virginia.edu if this would ever be helpful.

Sincerely yours,

George S. Geis

George Geis - geis@law.virginia.edu - (434) 243-2341

Megan L. Jones

2102 Arlington Blvd. #5, Charlottesville, VA 22903 • (805) 206-8680 • mlj3ke@virginia.edu

The attached writing sample is an excerpted portion of a brief that I submitted to the BMI Entertainment & Media Law Moot Court Competition. I have edited the writing sample for brevity and to exclude any portions authored by my co-competitor. What remains has not been edited by anyone else and is my own work product.

I. PETITIONER’S PAINTING, WHICH WAS CREATED WITH THE AID OF ARTIFICIAL INTELLIGENCE, IS AN ORIGINAL WORK OF AUTHORSHIP ENTITLED TO COPYRIGHT PROTECTION UNDER 17 U.S.C. § 102

In establishing the scope of eligibility for copyright protection, the Copyright Act states that such protection subsists “in original works of authorship fixed in any tangible medium of expression.” 17 U.S.C. § 102(a) (1990). Works qualifying under this statute may include those produced “either directly or with the aid of a machine or device.” *Id.* To constitute an “original work of authorship” within the meaning of the statute, a work must fulfill two conditions: it must possess at least some minimal degree of creativity and it must be independently created by the author seeking copyright protection. 1 Melville B. Nimmer & David Nimmer, *Nimmer on Copyright* § 2.01[A] (1990).

“Who Am I?” is a work of authorship that was produced with a sufficient degree of creativity to warrant protection. First, the low bar of creativity is met by the selective input and transformative output that occurred throughout the work’s production. Second, the element of authorship is established by two facts: the program that aided in the creation of “Who Am I?” does not operate so randomly or automatically that it is a mere mechanical process without an author, but it is also not so intelligent that it could be considered an author in its own right. Instead, the program was both initiated and controlled by Dushell, a human, making him the independent author of the visual work. Therefore, “Who Am I?” satisfies the prerequisites for copyright protection under the Copyright Act as an original work of authorship.

A. Petitioner’s artistic process bore the degree of creativity required to establish “Who Am I?” as an original work

The first element of original authorship is the presence of a minimal degree of creativity. Nimmer, *supra*, § 2.01[A]. No elaborate or extreme showing is necessary to satisfy this requirement; instead, courts have noted that “the requisite level of creativity is extremely low.” *Feist Publications, Inc. v. Rural Tel. Serv. Co.*, 499 U.S. 340, 345 (1991). Novelty and uniqueness are also not requirements. *Id.* Authors are merely obligated to present evidence of some “creative spark.” *Id.*

Furthermore, a “creative spark” may be present even if the work in question contains characteristics that closely resemble those of other works. *Id.* Indeed, the Copyright Act states that even a compilation may constitute an original work of authorship where pre-existing data has been selected, coordinated, or rearranged by an author in the form of a new work. 17 U.S.C. § 101 (2010). Typically, where a compilation consists of selectively inputted data and results in a thoughtful arrangement that goes beyond literal regurgitation, courts will find that the compilation has the requisite creativity to qualify for copyright protection.

The Copyright Office has generally differentiated creative works from non-creative ones by determining whether a work resulted from an author transposing data or transforming it. Illustratively, the Office’s compendium lists several types of work that are ineligible for copyright protection because they lack “creative input.” U.S. Copyright Office, *Compendium of U.S. Copyright Office Practices (Third)* § 313.2 (2021). These examples include works that result from “reducing or enlarging the size of a pre-existing work of authorship,” “converting a work from analog to digital format,” and “transposing a song from B major to C major.” *Id.* Each of these illustrations involve an author who simply captured data and transposed it into a new form containing identically arranged content. *Id.* Because these examples do not contain any original elements, they do not meet the Copyright Act’s threshold of creativity.

The Supreme Court analyzed such a work in *Feist Publications, Inc. v. Rural Telephone Service Co.*, where it held that a published list of names, towns, and telephone numbers did not satisfy the minimum constitutional standards for copyright protection because the end product was “devoid of even the slightest trace of creativity.” 499 U.S. at 362. The Court found that the plaintiff had failed to demonstrate that she had selected or arranged the dataset at issue, which was published in the form of a directory. *Id.* Instead, the list was merely an alphabetical compilation without any additional changes to the display or order of the information. *Id.* Moreover, the selection was not the original conception

of the author seeking copyright protection, but rather a list mandated for inclusion by another corporation. *Id.* For these reasons, the Court held that the plaintiff's work did not meet the minimum threshold of creativity to qualify as an original work. *Id.*

Feist demonstrates just how uncreative a piece must be for the U.S. Copyright Office to refuse protection. However, courts will find almost any greater level of modification sufficiently creative. For example, in another compilation case, *Urantia Foundation v. Maahera*, the Ninth Circuit held that the plaintiff's collecting, copying, and transcribing of another entity's work showed sufficient creativity to qualify the end result as an original work of authorship. 114 F.3d 955, 959. (9th Cir. 1997). Because the plaintiff had materially altered the structure, arrangement, organization, and order of the literary piece, it met the low burden of proving that some creativity was involved in the piece's production. *Id.* at 959.

As in those instances, Dushell's production of "Who Am I?" involved sufficient creativity to qualify as an original work. As with previous compilations that courts have analyzed, Dushell began with a dataset: in this case, nineteenth-century oil portraits. However, this dataset was not provided to him in pre-selected form like the data at issue in *Feist*; rather, Dushell personally selected the paintings that would be used in the process. Additionally, like the plaintiff in *Urantia*, Dushell used MUTT to materially alter these works by creating an entirely new painting that contained elements of, but was not identical to, the source dataset. Furthermore, it is clear that "Who Am I?" is not comparable to the Compendium's examples of works lacking creative input. To make the painting, Dushell did not transpose an existing work into another size or format. Instead, he transformed the data into a new painting that merely contained characteristics similar to the existing paintings. Because Dushell's process clearly meets the low bar for creativity set out in *Feist*, the Court should hold that this element for proving originality has been established.

B. Petitioner’s significant contributions to the creation of “Who Am I?” are sufficient to show that he independently authored the work

To attain eligibility for copyright protection, a work must be not only creative, but also independently authored by the individual seeking that protection. Nimmer, *supra*, § 2.01[A]. In 1884, the Supreme Court defined an author as “he to whom anything owes its origin; originator; maker; one who completes a work.” *Burrow-Giles Lithographic Co. v. Sarony*, 111 U.S. 53, 58 (1884). An author must also be human. *Naruto v. Slater*, 888 F.3d 418, 426 (9th Cir. 2018).

In this case, Dushell independently authored “Who Am I?” and thus satisfies this element. MUTT is not a mere mechanical process that operates randomly without the instruction of any author, nor is it a nonhuman quasi-author that is intelligent enough to author a work on its own. Instead, MUTT is an artistic tool that can only operate after being initiated and directed by a human. Thus, the court should find that Dushell independently authored the painting at issue and grant him the copyright protection to which he is entitled.

1. The technology that Petitioner used to make “Who Am I?” was not so random or automatic that it was a mere mechanical process

The Copyright Office’s compendium states that “the Office will not register works produced by a machine or mere mechanical process that operates randomly or automatically.” U.S. Copyright Office, *supra*, § 313.2. This is not to say that any work created with the help of a mechanical device fails to meet the authorship requirement. Instead, this barrier ensures that any work that receives copyright protection is one that truly originated from the mind of the human seeking protection, rather than one that occurred by happenstance, as is required by the *Burrow-Giles* definition of authorship. 111 U.S. at 58. In general, where a human’s intellectual discretion occurs before technologically-assisted generation of a work, and where that discretion contributorily dictates the outcome of that work, then courts will find that the process is not so automatic and random that it is a “mere mechanical process” within the definition of the compendium.

The compendium lists many examples of techniques which would constitute mere mechanical processes, but one specific example was heavily relied upon in the Thirteenth Circuit's opinion granting the defendant's motion for summary judgment. As an illustration of a work that was created without "intervention from a human author," the compendium describes "a claim based on a mechanical weaving process that randomly produces irregular shapes in the fabric without any discernible pattern." U.S. Copyright Office, *supra*, § 313.2.

This is not to say that every mechanical process with some automatic components results in a work that lacks human authorship. For example, in *Burrow-Giles Lithographic Co. v. Sarony*, the court held that a photograph taken by a camera did not lack human authorship. 111 U.S. 53, 59-60 (1884). This was because of the steps that the photographer took to control the outcome of the photograph. *Id.* In that case, the plaintiff photographer had prepared to take a photograph of Oscar Wilde by "selecting and arranging the costume, draperies, and other various accessories in said photograph, arranging the subject so as to present graceful outlines, arranging and disposing the light and shade," and "suggesting and evoking the desired expression." *Id.* at 60. For these reasons, the Court found the photographer to be the author of the photograph due to his significant involvement in deciding the contents of the final product. *Id.* at 60. Quite simply, the work was the "intellectual invention" of the plaintiff, not the mechanical process. *Id.*

Almost 100 years later, this intuition was supported by the findings of the National Commission of New Technology Uses of Copyrighted Works (CONTU), a committee authorized by Congress to address whether advances in computer technology might necessitate changes to the Copyright Act. Nat'l Comm'n on New Tech., *Uses of Copyrighted Works: Final Report of the National Commission on New Technological Uses of Copyrighted Works* 4, 9 (1978). In this report, CONTU considered the impact of computers on the scope of human authorship for the purposes of copyright protection. *Id.* In the opinion of the report's authors, computers were much more analogous to a camera or a typewriter than to any automatic, unaided process. *Id.* at 45. Rather than randomly or

mindlessly producing works, computers were helping to extend human power by reducing the time and effort spent creating certain types of art. *Id.* at 44. The conclusion of this report was that “no special problem” existed “with respect to creation of new works by the application or intervention of such automatic systems” and that there was no need to amend existing legislation defining authorship in response to the expanding use of these systems. *Id.* at 46. Ultimately, Congress did not amend the Copyright Act to add any additional requirements for computer-assisted works. 17 U.S.C. § 102 (1990).

Similarly, the assistance of a computer program should pose no special problem to Dushell’s claim of authorship. The program that assisted Dushell in the creation of “Who Am I?” is much more analogous to a camera than to a weaving process producing output randomly without a discernible pattern. Like the photograph in *Burrow-Giles*, “Who Am I?” is the intellectual invention of Dushell. Dushell selected the contents of the outputted work: a three-quarter portrait of a female. He also selected the style of clothing and hair that would appear in the picture. Dushell set the tone of the scene depicted in the painting by determining that it should resemble a nineteenth-century oil painting. None of these decisions were made randomly by MUTT; they were made thoughtfully by Dushell. The significant intellectual input that Dushell contributed to the creation of “Who Am I?” and the substantial impact he had on the resulting work demonstrates that the painting was in no way produced by a mere mechanical process. Thus, “Who Am I?” is a work of authorship that is entitled to copyright protection.

2. Petitioner’s conception and control of the production showed the minimum discretionary human intervention necessary to establish his authorship of the work

In order to be eligible for protection under the Copyright Act, the author seeking recognition must be human. *Naruto v. Slater*, 888 F.3d 418, 426 (9th Cir. 2018). “Who Am I?” is not only a creative work that was generated by a non-random process, but it also has a human author: Dushell. Any argument which suggests that MUTT, a computer program, is the author of the painting is based

on a misunderstanding of the nature of computer-assisted art. This becomes clear when the production of “Who Am I?” is analogized to other artistic processes which result in conflicts between multiple individuals all claiming authorship. Typically, where an individual was independently responsible for the conception of an idea and maintained sole control over the implementation of that idea outside of trivial details, courts consider that individual to be the independent author of that work.

Conflict over authorship is frequent in the film industry, where the resulting artistic works are typically complex and crafted with the input of hundreds of individuals. For example, in *16 Casa Duse, LLC v. Merkin*, the Second Circuit analyzed a dispute over authorship between a director and a film production company and held that the latter was the dominate author of a batch of raw footage they had produced together. 791 F.3d 257, 260 (2d Cir. 2015). The court found that the film company had “initiated the project,” “selected the cast, crew, and director,” and “controlled the production schedule” for the footage, among other contributions. *Id.* Ultimately, the fact that the film production company had “exercised far more decisionmaking authority” lead the court to hold that it was the author of the footage. *Id.*

Similarly, in *Lindsay v. Wrecked & Abandoned Vessel R.M.S. Titanic*, the court analyzed whether a documentary’s director was the author of certain footage that was copied without authorization by another party and answered in the affirmative. 1999 WL 816163, *3 (S.D.N.Y. 1999). There, the court held that the director could claim authorship because of the “high degree of control” he exercised over the filming of the documentary. *Id.* at *5. The court also referred to him as the “driving force” behind the film. *Id.* *6.

Based on that same reasoning, courts have typically denied authorship claims in cases where contributors to the production of the disputed film have had less than comprehensive control over the final product. One such ruling occurred in *Garcia v. Google, Inc.*, where the court found that an individual actress had not contributed enough creativity to the production of a film as a whole to be considered an author. 786 F.3d 733, 741 (9th Cir. 2015). In another case, *Aalmuhammed v. Lee*, the

court found that a script advisor was not the author of a film because he was not the “inventive mastermind” who exercised control of, created, or gave effect to the ideas of the film. 202 F.3d 1227, 1233 (9th Cir. 2000). These rulings make it clear that authorship is established by demonstrating a substantial level of power over the initiation of a work and the ideas behind it.

Unlike human directors, actors, or script supervisors, computers do not actually exercise true control over the creation of works of art, and thus could never reasonably claim to exercise primary control over construction of an artistic work. CONTU’s report does a fair job illustrating this point. The report asks whether a “work is one of human authorship, with the computer merely being an assistant instrument,” or whether the ideas “were actually conceived and executed not by man but by a machine.” Nat’l Comm’n on New Tech., *supra* at 4, 44. However, the report concludes that “there is no reasonable basis for considering that a computer in any way contributes to a work produced through its use.” *Id.* Instead, a computer can only operate when it is activated and directed by a human. *Id.*

As an example, CONTU describes a computer program designed to select musical notes, arrange them in a musical composition, and then perform the composition. *Id.* Although the computer gives the illusion of acting independently, CONTU explains, a computer will always produce work based on “the contents of the data base, the instructions indirectly provided in the program, and the direct discretionary intervention of a human involved in the process.” *Id.* Computers only extend human knowledge; they contribute none of their own. *Id.* at 45.

The general principles of authorship and their application to computer-assisted art demonstrate clearly that only Dushell, and not MUTT, can be considered an author of “Who Am I?” Like the film production company in *16 Casa Duse*, Dushell initiated the production of the painting, identified the tools that would be used in that production, and selected the elements that would be present in the final painting. Dushell, and not MUTT, decided that the painting would be modeled from nineteenth-

century oil portraits, and that it would contain a three-quarter view of a woman. Like a production company choosing members of a cast to act in a film, Dushell chose aspects of the painting's contents, like the type of hair and clothing that the subject would have. The role he played in specifying all but the finest details of "Who Am I?" made him the driving force behind the painting, not unlike the director in *Lindsay*.

If the Court finds that MUTT contributed any authorship at all, it is much more aptly analogized to the role of the actress in *Garcia* or the script supervisor in *Aalmuhammed*. These individuals certainly added their own elements of originality to the finished product, but ultimately, they cannot be deemed authors because they did not have comprehensive control over the production of their respective films. Similarly, even if the Court finds that MUTT contributed some originality to the painting at issue, the program cannot be considered an author because it lacked any comprehensive control over the conception of the painting and the details of its contents. As such, this Court should find that Dushell independently authored "Who Am I?" and is therefore entitled to protection under the Copyright Act.

CONCLUSION

This Court should find that "Who Am I?" is eligible for copyright protection because it is an original work of authorship under the Copyright Act. Dushell's discretionary decisions that lead to the creation of the work demonstrated the "creative spark" necessary to surpass the low bar of originality. His initiation and control of the process that conceived the work establish him as the painting's sole author. The work thus satisfies the requirements of creativity and independent authorship, rendering it a protectable original work within the meaning of the Copyright Act. Therefore, this Court should reverse the holding of the Thirteenth Circuit and deny the defendants' motion for summary judgment.

Applicant Details

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 Middle Initial **E**
 Last Name **Josey**
 Citizenship Status **U. S. Citizen**
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Address

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Country United States

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Applicant Education

BA/BS From **Niagara University**
 Date of BA/BS **August 2019**
 JD/LLB From **Ohio Northern University--Claude W. Pettit College of Law**
<http://www.law.onu.edu>

Date of JD/LLB **May 14, 2022**

Class Rank **10%**

Does the law school have a Law Review/Journal? **Yes**

Law Review/Journal **No**

Moot Court Experience **No**

Bar Admission

Prior Judicial Experience

Judicial Internships/ Externships	No
Post-graduate Judicial Law Clerk	No

Specialized Work Experience

Recommenders

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References

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This applicant has certified that all data entered in this profile and any application documents are true and correct.

DAVID E. JOSEY

(716) 345-7151 | d-josey.1@onu.edu | 5993 Miller Road, Niagara Falls NY 14304

April 27, 2022

To Whom It May Concern:

My name is David Josey and I am writing to apply for the soon to be open Term Law Clerk position.

I am a third-year law student attending Ohio Northern University Claude W. Pettit College of Law in Ada, Ohio.

I received a Bachelor of Art in History degree from Niagara University in Niagara Falls, New York in 2019.

I also received an Associates degree in Business Administration from Niagara County Community College in 2017.

This position is of great interest to me. I am currently seeking post-graduation employment and I am ready willing and able to move anywhere employment may take me. I believe that a position as a clerk would provide me with an unparalleled learning experience and that I would succeed in performing this work. Researching and writing are some of the things that I have enjoyed doing most throughout law school and my internship and I believe that I would continue to do both well in this role.

The study of criminal law is what I am most hopeful of gaining professional exposure and experience in, however I am also hoping that I will be exposed to as many areas of the law as possible.

I appreciate your consideration of me as a candidate. If you desire additional information or to schedule an interview, I can be reached at 716-345-7151 or d-josey.1@onu.edu.

I look forward to hearing from you.

Sincerely,



David Josey

DAVID E. JOSEY

(716) 345-7151 | d-josey.1@onu.edu | 5993 Miller Road, Niagara Falls NY 14304

EDUCATION

Ohio Northern University Pettit College of Law, Ada OH

Juris Doctor Candidate, May 2022

- GPA 3.80 Class Rank 4th

Niagara University, Niagara Falls NY

Bachelor of Arts in History, May 2019

- GPA 3.81 Honors with High Distinction

Niagara County Community College, Sanborn NY

Associate in Applied Science Business Administration, December 2017

Personal Training Certificate Program, May 2015

- GPA 3.35

Niagara Career and Technical Education Center, two year- Personal Trainer Program, June 2014

EXPERIENCE

Teaching Assistant, Constitutional Law I, and Constitutional Law II, Ohio Northern University Pettit College of Law August 2021-Present

- Provide assistance to students as needed to aid in the understanding of the material

Intern, Kathleen Gaines, Attorney at Law, June 2021-December 2021

- Drafted petitions and other documents, researched case law, scheduled client meetings and attended court proceedings regularly

Shift Supervisor, Rite Aid, Niagara Falls NY, June 2014-May 2019

- Responsible for the day-to-day operations of the store; processed vendor deliveries, performed audits, made daily bank deposits; and monitored employee issues

Personal Trainer, Crunch Fitness (Formerly World Gym), Niagara Falls NY, December 2016-June 2018

- Trained clients and personally designed fitness programs

ACTIVITIES/AWARDS

The Willis Society

Ohio Northern University Pettit College of Law Book Awards – Evidence, Constitutional Law 2, Church and State Seminar, Criminal Procedure Investigation, Real Estate Finance and Employment Discrimination

Ohio Northern University Pettit College of Law Deans List: Fall 2019, Spring 2020, Fall 2020, Spring 2021, Fall 2021,

Niagara University Deans List: Fall 2017, Spring 2018, Fall 2018, Spring 2019

National History Honor Society: Phi Alpha Theta chapter 2019

National Business Honor Society Alpha Beta Gamma

INTERESTS

Recreational powerlifting

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Academic Transcript

(/StudentSelfService/)

David E Josey

Academic Transcript

Transcript Level

Law

Transcript Type

World Wide Web

Student Information

Degrees
AwardedInstitution
CreditTranscript
TotalsCourse(s) in
Progress

This is not an official transcript. Courses which are in progress may also be included on this transcript.

Student Information

Name

David E Josey

Curriculum Information

Current Program :

College

Law

Major and Department

Law, Law

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Academic Transcript

Degrees Awarded

Approved Pending
Completion

Juris Doctor

Institutional Honors

Magna Cum Laude

Curriculum Information

Primary Degree

College

Law

Major

Law

Institution Credit

Term : 2019-20 Fall Semester

Academic Standing

Good Standing

Additional Standing

Dean's List

Subject	Course	Level	Title	Grade	Credit Hours	Quality Points	R
LAW	1001	LW	Legal Research and Writing 1	B+	3.000	9.99	
LAW	1011	LW	Civil Procedure 1	A-	3.000	11.01	
LAW	1021	LW	Contracts 1	A	3.000	12.00	
LAW	1031	LW	Property 1	B+	3.000	9.99	
LAW	1043	LW	Torts	A	4.000	16.00	

Term Totals	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Current Term	16.000	16.000	16.000	16.000	58.99	3.69
Cumulative	16.000	16.000	16.000	16.000	58.99	3.69

Term : 2019-20 Spring Semester

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Academic Transcript

Academic Standing

Good Standing

Additional Standing

Dean's List

Term Comments

COVID-19 Disruption. Moved to Remote Instruction.

Optional Grades Permitted.

P - Pass, LP - Low Passes, NP - Not Passed

Subject	Course	Level	Title	Grade	Credit Hours	Quality Points	R
LAW	1002	LW	Legal Research and Writing 2	A-	2.000	7.34	
LAW	1004	LW	Legal Prob Solving/Analysis	A	2.000	8.00	
LAW	1012	LW	Civil Procedure 2	A-	3.000	11.01	
LAW	1022	LW	Contracts 2	A	3.000	12.00	
LAW	1032	LW	Property 2	P	3.000	0.00	
LAW	1035	LW	Public Law & Legal Process	P	3.000	0.00	
LAW	1052	LW	Criminal Law	A-	3.000	11.01	

Term Totals	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Current Term	19.000	19.000	19.000	13.000	49.36	3.80
Cumulative	35.000	35.000	35.000	29.000	108.35	3.74

Term : 2020-21 Fall Semester

Academic Standing

Good Standing

Additional Standing

Dean's List

Subject	Course	Level	Title	Grade	Credit Hours	Quality Points	R
LAW	1216	LW	Alternative Dispute Resolution	A	2.000	8.00	
LAW	1232	LW	Business Organizations 1	B	3.000	9.00	
LAW	1280	LW	Constitutional Law 1	A	3.000	12.00	
LAW	1304	LW	Domestic Relations	A-	3.000	11.01	
LAW	1324	LW	Evidence	A+	3.000	12.99	

Term Totals	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Current Term	14.000	14.000	14.000	14.000	53.00	3.79
Cumulative	49.000	49.000	49.000	43.000	161.35	3.75

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Academic Transcript

Term : 2020-21 Spring Semester

Academic Standing

Good Standing

Additional Standing

Dean's List

Subject	Course	Level	Title	Grade	Credit Hours	Quality Points	R
LAW	1284	LW	Constitutional Law 2	A	3.000	12.00	
LAW	1300	LW	Criminal Procedure	A	3.000	12.00	
LAW	1380	LW	Law Office Economics/Mgmt	B	2.000	6.00	
LAW	1418	LW	Real Estate Fin-Mortgage Law	A	2.000	8.00	
LAW	1510	LW	Church and State Seminar	A+	2.000	8.66	

Term Totals	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Current Term	12.000	12.000	12.000	12.000	46.66	3.89
Cumulative	61.000	61.000	61.000	55.000	208.01	3.78

Term : 2021-22 Fall Semester

Academic Standing

Good Standing

Additional Standing

Dean's List

Subject	Course	Level	Title	Grade	Credit Hours	Quality Points	R
LAW	1296	LW	Criminal Practice:Introduction	A-	2.000	7.34	
LAW	1308	LW	Employment Discrimination Law	A	3.000	12.00	
LAW	1432	LW	S/T:Criminal Proc.Adjudication	B+	3.000	9.99	
LAW	1432	LW	S/T- Transition to Pract. 1	A+	3.000	12.99	
LAW	1432	LW	S/T: 1st Amendment Law &Theory	A	3.000	12.00	

Term Totals	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Current Term	14.000	14.000	14.000	14.000	54.32	3.88
Cumulative	75.000	75.000	75.000	69.000	262.33	3.80

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Academic Transcript

Transcript Totals

Transcript Totals - (Law)	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Total Institution	75.000	75.000	75.000	69.000	262.33	3.80
Total Transfer	0.000	0.000	0.000	0.000	0.00	0.00
Overall	75.000	75.000	75.000	69.00	262.33	3.80

Course(s) in Progress

Term : 2021-22 Spring Semester

Subject	Course	Level	Title	Credit Hours
LAW	1306	LW	Elder Law	3.000
LAW	1328	LW	Federal Courts	3.000
LAW	1388	LW	Legal Profession	2.000
LAW	1399	LW	Negotiation Workshop Skills	3.000
LAW	1432	LW	ST: Bankruptcy & Creditors' Ri	2.000
LAW	1482	LW	Prac Analysis, Strat, & Skill2	3.000

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Academic Transcript

NIAGARA UNIVERSITY
NIAGARA UNIVERSITY, NEW YORK 14109
(716)-286-8727

DATE OF REPORT: 08 Sep 2020
STUDENT NAME: Josey, David E
SS NUMBER: XXX-XX-7408
STUDENT NUMBER: 0930326
COLLEGE: ARTS & SCIENCES
CLASS: GRADUATED STUDENT

MAJORS: History
MINORS:

Total Transfer Credits	69.00
PHI105 INTRO TO PHILO	3.00
ENG100 INTRODUCTION TO LITERATURE	3.00
ACC112 MANAGEMENT ACCOUNTING	3.00
HIS107 WORLD HISTORY TO 1500	3.00
ECO102 PRINCIPLES OF MICROECONOMICS	3.00
BUSELE BUSINESS ELECTIVE	3.00
BUSELE BUSINESS ELECTIVE	3.00
ECO101 PRINCIPLES OF MACROECONOMICS	3.00
ENG231 BUS COMMUNICATION	3.00
BUSELE BUSINESS ELECTIVE	3.00
LAW301 BUSINESS LAW I	3.00
MGT341 HUMAN RESOURCE MANAGEMENT	3.00
CIS232 MICRO APPLIC FOR BUS	3.00
MKG201 PRINCIPLES OF MARKETING	3.00
MGT271 MANAGEMENT PRINCIPLES	3.00
ACC111 FINANCIAL ACCOUNTING	3.00
BIO101 HUMAN BIOLOGY	3.00
ELEAS ANALYTICAL SKILLS ELECTIVE	3.00
MAT101 MATH FOR THE LIBERAL ARTS	3.00
GENELE GENERAL ELECTIVE	3.00
PSY101 INTRODUCTORY PSYCH	3.00
GENELE GENERAL ELECTIVE	3.00
WRT100 THINKING AND WRITING	3.00
HRS ATT: 0.00 COMP: 69.00 GPA: 0.00	

** BACHELOR OF ARTS GRANTED, 08/24/2019 **
** PROGRAM OF STUDY - History **
** HONORS - WITH DISTINCTION **
** CREDITS - 126 QPA - 3.81 **

END OF TRANSCRIPT

FALL 2017

	CR.HRS.	GRADE
HIS200 INTRO RESEARCH	3.00	A-
POL203 INTRODUCTION TO LAW	3.00	A+
SOC207 INTRO TO ARCHAEOLOGY	3.00	A
HIS304 THE REFORMATION	3.00	B
HRS ATT: 12.00 COMP: 12.00 GPA: 3.67		
**** DEAN'S LIST ****		

SPRING 2018

	CR.HRS.	GRADE
REL103 INTRO CHRISTIANITY	3.00	B+
HIS322 HIST OF SOVIET UNION	3.00	A
HIS303 RENAISSANCE	3.00	A-
HIS199 USA IN CONTEMP WORLD	3.00	A
CRJ360 CRIMINAL PROCEDURE	3.00	A+
HRS ATT: 15.00 COMP: 15.00 GPA: 3.80		
**** DEAN'S LIST ****		

FALL 2018

	CR.HRS.	GRADE
HIS204 INTRO TO PUBLIC HISTORY	3.00	A-
REL206 WORLD RELIGION	3.00	A-
HIS400 SENIOR SEMINAR	0.00	W
HIS321 HISTORY OF RUSSIA	3.00	A-
HIS103 AMERICA TO 1876	3.00	A
HRS ATT: 12.00 COMP: 12.00 GPA: 3.75		
**** DEAN'S LIST ****		

SPRING 2019

	CR.HRS.	GRADE
HIS400 SENIOR SEMINAR	3.00	A
HIS375 MODERN CHINA	3.00	A
HIS359 CANADA AND U.S. RELATIONS	3.00	A-
HIS108 THE MODERN WORLD	3.00	A
HRS ATT: 12.00 COMP: 12.00 GPA: 3.92		
**** DEAN'S LIST ****		

SUMMER 2019

	CR.HRS.	GRADE
HIS371 MIDDLE EAST	3.00	A
HIS390 TOPIC:ROARING 20'S IN AMERICA	3.00	A+
HRS ATT: 6.00 COMP: 6.00 GPA: 4.00		

===== TRANSCRIPT TOTALS =====
CAL HR ATT:57.00 NU HRS COMP:57.00 TRANS HRS:69.00
HRS COMP: 126.00 Q PTS: 217.05 GPA: 3.81

END OF COLUMN - NO ADDITIONAL DATA


Niagara University
University Registrar



NIAGARA COUNTY COMMUNITY COLLEGE

3111 Saunders Settlement Road
 Sanborn, New York 14132
 Voice: (716) 614-6250 Fax: (716) 614-6821
 www.niagaracc.suny.edu

Record of: David E Josey
 5993 Miller Rd
 Niagara Falls, NY 14304

Issued to: DAVID JOSEY
 5993 MILLER ROAD
 REFNUM:36798486
 NIAGARA FALLS, NY 14304-1051

OFFICE OF REGISTRATION & RECORDS TRANSCRIPT OF ACADEMIC RECORD

OFFICIAL

Page: 1

Date Issued: 11-SEP-2020
 Date of Birth: 15-DEC
 Student ID: @00181736
 Student SSN: ***-**-7408
 HS: Victory Christian Academy
 HS Grad Date: 06-06-****

GRADUATION AT NCCC IS BASED ON ACHIEVING A MINIMUM OF 2.00 GRADE POINT AVERAGE IN THOSE COURSES APPLICABLE TO THE CURRICULUM IN WHICH THE DEGREE/CERTIFICATE IS AWARDED, IN ADDITION TO ACHIEVING THE PROGRAM REQUIREMENTS.

Course Level: Undergraduate

Current Program

Associate in Applied Science

Program : Bus: Business Admin, A.A.S.

Major : Bus: Business Adm AAS

Degree History Certificate 22-AUG-2015

Primary Degree

Program : Personal Training, Certificate

Major : Personal Training Certificate

Degree History Associate in Applied Science 23-DEC-2017

Primary Degree

Program : Bus: Business Admin, A.A.S.

Major : Bus: Business Adm AAS

Inst. Honors: With Merit

SUBJ NO.	COURSE TITLE	CRED GRD	PTS R
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INSTITUTION CREDIT:

Fall Semester, 2014

Personal Training Certificate

BIO 117	Human Biology	4.00 F	0.00 E
BIO 117L	Human Biology Lab	0.00 NG	0.00 E
ENG 101	Writing I	3.00 B	9.00
HED 201	Healthful Living	3.00 B+	9.99
HED 214	Advanced First Aid & CPR	2.00 A	8.00
PSY 110	Introduction to Psychology	3.00 B+	9.99
Ehrs: 11.00 GPA-Hrs: 11.00 QPts: 36.98 GPA: 3.36			

Spring Semester, 2015

Personal Training Certificate

HED 205	Nutrition & Health	3.00 B-	8.01
HPE 225	Kinesiology/Exercise & Sport	3.00 C+	6.99
HPE 260	Personal Trainer	3.00 B+	9.99
HPE 261	Personal Training Field Placem	1.00 B-	2.67
MAT 106	Contemporary Math	3.00 C	6.00
PED 255	Advanced Weight Training	1.00 C	2.00
SPE 103	Interpersonal Communication	3.00 B+	9.99
Ehrs: 17.00 GPA-Hrs: 17.00 QPts: 45.65 GPA: 2.69			

Summer Semester, 2015

Personal Training Certificate

BIO 117	Human Biology	4.00 B	12.00 I
BIO 117L	Human Biology Lab	0.00 NG	0.00 I
Ehrs: 4.00 GPA-Hrs: 4.00 QPts: 12.00 GPA: 3.00			

***** CONTINUED ON NEXT COLUMN *****

SUBJ NO.	COURSE TITLE	CRED GRD	PTS R
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Institution Information continued:

Fall Semester, 2015

Bus: Business Adm AAS

ACC 116	Financial Accounting	3.00 B+	9.99
BUS 101	Organization & Management	3.00 B-	8.01
BUS 113	Fundamentals Of Mktg	3.00 B+	9.99
CIS 100	Intro to Computer Applications	3.00 A	12.00
ENG 102	Writing II & Intro to Lit	3.00 C-	0.00 E
Ehrs: 12.00 GPA-Hrs: 12.00 QPts: 39.99 GPA: 3.33			

Spring Semester, 2016

Bus: Business Adm AAS

ACC 117	Managerial Accounting	3.00 C-	0.00 E
BUS 102	Human Resource Management	3.00 B+	9.99
BUS 117	Business Law I	3.00 A	12.00
BUS 136	Retail Merchandis & Buying	3.00 A	12.00
BUS 229	Business Communications	3.00 B+	9.99
ECO 101	Macroeconomics	3.00 B	9.00
Ehrs: 15.00 GPA-Hrs: 15.00 QPts: 52.98 GPA: 3.53			

Fall Semester, 2016

Bus: Business Adm AAS

BUS 114	Consumer Behavior	3.00 A	12.00
BUS 238	Management Seminar	3.00 A	12.00
ECO 102	Microeconomics	3.00 A	12.00
HIS 111	World Civilizations I	3.00 A-	11.01
Ehrs: 12.00 GPA-Hrs: 12.00 QPts: 47.01 GPA: 3.92			

Dean's List

Spring Semester, 2017

Bus: Business Adm AAS

ACC 117	Managerial Accounting	3.00 A-	11.01 I
ENG 102	Writing II & Intro to Lit	3.00 B+	9.99 I
PHI 149	Intro to Philosophy	3.00 A	12.00
Ehrs: 9.00 GPA-Hrs: 9.00 QPts: 33.00 GPA: 3.67			

Part-Time Honor's List

***** TRANSCRIPT TOTALS *****				
	Earned Hrs	GPA Hrs	Points	GPA
TOTAL INSTITUTION	80.00	80.00	267.61	3.35

TOTAL TRANSFER	0.00	0.00	0.00	0.00
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OVERALL	80.00	80.00	267.61	3.35
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***** END OF TRANSCRIPT *****

The Family Educational Rights and Privacy Act of 1974 (as amended) prohibits the release of this information without the student's written consent. An official transcript must include the signature of the registrar and the seal



ATLANTA

CINCINNATI

COLUMBUS

NEW YORK

CHICAGO

CLEVELAND

DAYTON

WASHINGTON, D.C.

April 8, 2022

The Honorable Elizabeth Hanes
Spottswood W. Robinson III & Robert R. Merhige, Jr.,
U.S. Courthouse
701 East Broad Street, 5th Floor
Richmond, VA 23219

Re: Letter of Recommendation – David E. Josey

Dear Judge Hanes:

I am writing to you regarding Law Clerk applicant, David E. Josey, whom I have known during the course of his studies at Ohio Northern University, Pettit College of Law. Mr. Josey has been a student in three law school courses that I have taught, and we have become acquainted personally, as I have advised him with respect to both academic and professional development matters. Based upon my interaction with and knowledge of Mr. Josey, I can attest to Mr. Josey's strong academic standing and excellent writing skills, as well as his high moral character. I am very supportive of Mr. Josey's candidacy for this judicial clerkship and appreciate your time and attention to his application.

Please contact me if you have any questions or if I may be any further assistance. Thank you very much

Very truly yours,

A handwritten signature in cursive script, appearing to read "Darrel R. Davison".

Darrel R. Davison
Adjunct Professor of Law
Ohio Northern University
Pettit College of Law

Darrel.Davison@ThompsonHine.com Fax: 614.469.3361 Phone: 614.469.3231

THOMPSON HINE LLP
ATTORNEYS AT LAW

41 South High Street
Suite 1700
Columbus, Ohio 43215-6101

www.ThompsonHine.com
Phone: 614.469.3200
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Kathleen E. Gaines

ATTORNEY AT LAW

2074 LOCKPORT ROAD

NIAGARA FALLS, NEW YORK 14304

(716) 297-9786

FAX (716) 371-2975

EMAIL: kegnlaw@yahoo.com

Cara E. Julias
Paralegal

To Whom It May Concern:

I am writing on behalf of David Josey. I have known Mr. Josey for many years. He is a bright and personable young man. Throughout his college and law school career, he has often reached out to me asking questions about law school and the practice of law. I have no doubt he will be an excellent law clerk.

During the summer of 2021, Mr. Josey interned in my office.

My practice encompasses many areas, including matrimonial and family law, real estate, wills and estates, criminal and civil law.

Due to COVID, during the summer of 2021 all my court appearances, including hearings, were virtual.

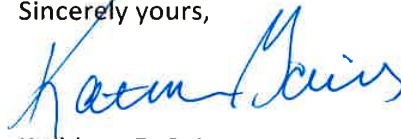
Mr. Josey often listened in on appearances. Afterwards, he asked intelligent and thoughtful questions. It was clear he had a sharp and inquisitive mind and was eager to learn.

In addition to observing hearings, he researched legal issues and drafted documents. He typed pleadings, letters and other documents.

Mr. Josey completed any task I gave him efficiently, conscientiously and professionally. He did not leave the office until all work assigned to him was done. He worked well with my staff and was extremely helpful.

I enthusiastically recommend David Josey. He would be a welcomed and invaluable addition to any office.

Sincerely yours,



Kathleen E. Gaines

April 07, 2022

The Honorable Elizabeth Hanes
Spottswood W. Robinson III & Robert R. Merhige,
Jr., U.S. Courthouse
701 East Broad Street, 5th Floor
Richmond, VA 23219

Dear Judge Hanes:

It is my great pleasure to write on behalf of David Josey, who has applied for a position as a law clerk in your chambers. David is my current teaching assistant for Constitutional Law 1 and 2, and he has taken multiple classes from me (Constitutional Law 1 and 2, Federal Courts, Church/State Seminar). I have a good sense of his abilities and personality.

Simply put, David is a star, and I genuinely enjoy working with him as a teaching assistant. He is a fantastic student, who gets especially excited by difficult, challenging legal questions. He has a wonderful temperament, very relaxed, easygoing, and respectful. He is currently ranked 4th in his class, and has racked up book awards for the highest grade in six different law classes. He also excelled as an undergraduate student, taking a BA in History with High Distinction, and earning a 3.81 g.p.a. from Niagara University. While David's grades as an L-1 resulted in an invitation to join the ONU Law Review, he declined that invitation, so that he could focus on excelling in his classes. At that time, David expected to take over his aunt's legal practice in western New York, which was largely focused on estate planning, and he did not think Law Review would be necessary for him. That practice option is still available to him. However, since that time, he has determined that he would like to gain wider legal experience before he settles into a single practice area.

David would be an ideal judicial law clerk. He writes extremely well and clearly, he has a first-rate mind, he delights in novel and intricate issues requiring excellent research skills and rigorous analysis, he is hard-working, a complete self-starter, and he is entirely discrete and reliable. I am confident that he would exceed your expectations in every way.

If I can answer any questions about David, please do not hesitate to contact me at (419) 772-2228.

Sincerely yours,

Joanne C. Brant
Professor of Law

Joanne Brant - j-brant@onu.edu - 419-772-2228

